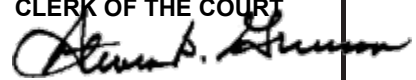


EXHIBIT 9

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

INNOVATIV MEDIA GROUP, INC.,)
)
Plaintiff,)
)
vs.)
)
FTE NETWORKS, INC.,)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-22-849188-B
DEPT NO. XXXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE
WEDNESDAY, APRIL 12, 2023

TRANSCRIPT RE:

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

APPEARANCES:

FOR INNOVATIV MEDIA: THERESE M. SHANKS, ESQ.
Via BlueJeans

FOR THE DEFENDANTS: DANIEL CEREGHINO, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 **LAS VEGAS, CLARK COUNTY, NEVADA, APRIL 12, 2023, 9:56 A.M.**

2 * * * * *

3 THE COURT: Okay. We are going to call --
4 Madam Court Recorder?

5 THE COURT RECORDER: You're on the record.

6 THE COURT: We're on the record. We're good?

7 THE COURT RECORDER: Uh-huh.

8 THE COURT: Beautiful. Okay.

9 Pages 5, Case 849188, Innovativ Media Group versus
10 FTE Networks.

11 Counsel for Innovativ, please make your appearance.

12 MS. SHANKS: Good morning, Your Honor. Therese Shanks
13 on behalf of plaintiff Innovativ Media Group.

14 THE COURT: Thank you so much.

15 On behalf of FTE, please.

16 MR. CEREGHINO: Good morning, Your Honor. Dan
17 Cereghino on behalf of FTE and the Lateral entity and
18 Mr. De Silva.

19 THE COURT: Okay. I appreciate it. Thanks.

20 Okay. So what we have today is the -- I have a
21 special setting so that we could address the motion for
22 preliminary injunction. Got the motion. Got the opposition.
23 Got the reply.

24 There's a little bit -- I will tell you the Court
25 will end up -- let me give some -- the motion is Document 227.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 The opposition is Document 234. And the reply is Document 236.

2 So I will tell you the Court's going to have a
3 question. You kind of both addressed this a little bit at the
4 time of the TRO hearing, but just to flush out each party's
5 viewpoint on the scope of the requested relief and the
6 authority of the Court with regards to the requested relief
7 because of the differences in viewpoints as to who may or may
8 not own, previously own or whatever verbiage you would like to
9 do that will take my question as making a determination of
10 that, but of some of the various shares.

11 So I'm sure you're both going to cover that anyway in
12 your standards, but that is going to be a question that the
13 Court was going to ask. If it's not covered, I'll just ask it
14 at the end, or if you want to incorporate it, that's fine. If
15 you have a preset presentation, then I'll ask at the end. No
16 worries.

17 So, Counsel for the movant, since it's your motion
18 for a preliminary injunction, you get to go first, please.

19 MS. SHANKS: Thank you, Your Honor. Therese Shanks
20 for Innovativ Media Group.

21 Our request in this motion is simple. We just want
22 this Court to maintain the status quo. We have asked this
23 Court to restrain FTE from taking any action reliant upon the
24 putative stop cancellation from acting under the newly amended
25 or restated bylaws, from issuing any new stock and just

1 allowing us to litigate this case.

2 At the hearing on the TRO, we noted the orders we
3 believe FTE's latest conduct violates, if not directly, then in
4 spirit and intent.

5 What is clear to us is that FTE is attempting to
6 undermine our pending case by a maneuver prohibited by Nevada
7 law while simultaneously delaying our ability to litigate this
8 case by delaying discovery. And as we argued to this Court, we
9 think that this is pure obstruction. All that FTE has done to
10 date is to obstruct Innovativ at every step of this litigation.

11 We believe that the cancellation of Innovativ shares
12 is an active conversion of a personal property right, which is
13 not permitted by Nevada law. We have significant concern over
14 this new amended and restated bylaws, which would permit
15 embattled directors to remove an independent director, which is
16 also not permitted by Nevada law. And it all appears to be
17 approved by a less than a majority of shareholders or by
18 shareholders whose stock would have been issued in violation of
19 either the bylaws amendment whose validity is currently pending
20 before this Court and/or Nevada law because it would not have
21 been issued with director consent.

22 So all that we are asking in this motion, Your Honor,
23 is to maintain the status quo so that we can litigate the
24 merits of the case.

25 Our request we think is fairly straightforward. We

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 are not asking this Court to exceed its jurisdiction or to
2 restrain third parties.

3 What we are asking this Court to do is can FTE, who
4 is a party over whom this Court has jurisdiction, do what it
5 did? And we think the answer is no, and we think that this
6 Court unquestionably has jurisdiction to tell FTE to maintain
7 the status quo until we can figure that out.

8 We are not asking this Court to determine the rights
9 of third parties. We are not asking this Court to restrain
10 third parties. We are just asking this Court that FTE maintain
11 the status quo, and to get to that order, all that this Court
12 will have to do is look at FTE's conduct. Can a Nevada
13 corporation, i.e., FTE unilaterally cancel shareholders' stock
14 under Nevada law? The answer is no.

15 Can FTE, over whom this Court has jurisdiction, act
16 pursuant to these new bylaws? Well, we think we should figure
17 that out. But in the meantime, we want a status quo order
18 because if those bylaws aren't valid and the director gets
19 removed, there's void director action.

20 FTE's thrust of its opposition is that Innovativ
21 lacked standing because FTE canceled Innovativ's stock, but
22 then FTE turns around and simultaneously argues that Innovativ
23 cannot challenge the cancellation of stock because FTE actually
24 canceled TTP8 stock.

25 Well, Innovativ stock was bought from TTP8.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 Cancellation of one is the cancellation of the other. FTE
2 cannot have it both ways. It cannot deprive Innovativ of a
3 property right and then simultaneously argue that Innovativ
4 lacked standing because it no longer has that property right.
5 That's the epitome of standing. You take something away from
6 me, I disagree that you should have taken away from me, I
7 clearly have standing to bring a suit for that. That is the
8 justiciable case of controversy, and I have a vested interest
9 in whether or not I now own that property. That's standing.

10 But this argument again overlooks what Innovativ is
11 asking. Asking FTE to refrain from acting upon the
12 cancellation of stock is just a request for the status quo.
13 That's it. FTE filed a motion for summary judgment on
14 Innovativ standing. That's in the process of being briefed,
15 and that will be heard by this Court. FTE didn't provide any
16 reason or identify the harm as to why the status quo should be
17 maintained until this Court can get to that decision on the
18 merits. And in the course of that motion, this Court will have
19 to determine as a matter of law whether FTE can even cancel
20 stock unilaterally under Nevada law.

21 I can tell you, Your Honor, that the law does not
22 support FTE's actions. We've provided this Court with
23 authority demonstrating that. We, you know, the Delaware Court
24 has rejected this theory of FTE's, which you did take judicial
25 notice of during the TRO hearing, that corporations in Nevada

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 cannot deprive shareholders based upon unproven allegations of
2 fraud.

3 We have demonstrated that nothing in the plain
4 language of NRS 78.211 permits a corporation to unilaterally
5 cancel stock. We've provided this Court with case law finding
6 that a corporation cannot do it, both under NRS 78.211 and
7 under related sister statutes out of Florida.

8 And we -- contrary to FTE's assertion at the last
9 hearing, that case law is not outdated. It's from the 2000s
10 and onward.

11 Also, we've provided this Court with evidence that
12 FTE cannot rely upon Subpart 3 of that statute because that
13 would have required FTE to place TTP8 stock into escrow. The
14 stock transfers to TTP8 from FTE March 2020 are in evidence in
15 our appendix. If you look at Exhibit 17, 18, 19 and 20, those
16 demonstrate that TTP8 stock was never placed into escrow. So
17 Subpart 3 is not available. That argument was raised under the
18 case law, the *Jacob versus Bernatek* case, a Florida case
19 addressing virtually identical statutory language, and that
20 Court similarly rejected the argument where there was no
21 evidence that the stock was ever in escrow, that Subpart is not
22 available. And so you cannot unilaterally cancel the stock.

23 There's no alternative authority that FTE provided to
24 this in their opposition.

25 The thrust of the opposition again is that we are

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 purportedly asking this Court to exercise jurisdiction over
2 nonparties, which we are not and that we lack standing, which
3 we do not. This Court unquestionably has jurisdiction over
4 FTE, and Innovativ clearly has standing to challenge the
5 conversion of its stock. Stock is personal property under
6 Nevada law. It cannot just be taken away. And to read
7 NRS 78.211 to permit that is directly contrary to NRS 78.240.

8 Furthermore, Innovativ is a protected purchaser, and
9 there was no evidence provided to refute that Innovativ was
10 not. The only argument is that to be a protected purchaser you
11 must have evidence of, quote, "good faith," unquote, but that
12 again is inaccurate.

13 Under NRS 104.8202 and .8303, the protected purchaser
14 statutes, Innovativ took title to its stock free of any adverse
15 claims. There is no requirement that this be done in good
16 faith. The UCC comments make it clear that they took out that
17 language because it was confusing because what the UCC meant by
18 good faith was without notice of adverse claims. And Innovativ
19 did not have notice of adverse claims. Innovativ has met those
20 elements.

21 It provided compensation to TTP8 for that stock,
22 i.e., gave value. It did not know, and there was not a notice,
23 and she could not have been on notice of adverse claims because
24 TTP's performance wasn't even due by the time Innovativ got its
25 stock in May 2020, and it did get the stock. The stock was

JD Reporting, Inc.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 issued. So we think that Innovativ has -- should still be a
2 shareholder.

3 FTE has also raised the question of whether our
4 current request relates to the presently pending complaint, and
5 it absolutely does. The bylaws that -- the newly amended and
6 restated bylaws that FTE has already recognized, Your Honor.
7 They already filed an 8-K telling the shareholders these are
8 our new bylaws. These bylaws unwind the --

9 THE COURT: Counsel. Counsel. I want to stop you
10 for one quick second. They filed it on what date in comparison
11 to the Court's order? Was it before or after the Court's
12 order?

13 MS. SHANKS: Before.

14 THE COURT: Okay. Thank you. Go ahead, please.

15 MS. SHANKS: Yeah. The bylaws unwind the
16 restrictions that the bylaw's amendment placed upon FTE and its
17 directors, and this Court hasn't had a chance to reach the
18 merits of that amendment yet. So really what we're trying to
19 do is keep the status quo when we asked them not to act under
20 those bylaws.

21 But more importantly, as we point out in our moving
22 papers, the signatories of that amendment only constitute
23 19 percent of the voting power of the shareholders who appear
24 on the shareholder list, and that means that in order for that
25 amendment to be valid, more stock must have been issued, but

1 the signatories are all either Richard De Silva and his
2 affiliated entities because he signs it eight times, or
3 entities that we now know from litigation across the country
4 are acting in concert with Mr. De Silva. And our bylaws
5 amendment, if valid, would prohibit the issuance of the stock
6 to those affiliate entities without shareholder approval.

7 So we cannot determine the validity of these newly
8 amended and restated bylaws until we determine the validity of
9 our bylaws amendment. Because if stock was issued in violation
10 of our bylaws amendment, that calls into question the validity
11 of these newly amended bylaws. They are inextricably
12 interrelated, and our bylaws amendment is not mooted by this
13 new amended and restated bylaws. It just makes it that much
14 more important to get to the merits of the case.

15 Furthermore, if the stock was issued, Joseph
16 Cunningham did not know about it. So it would arguably be void
17 for lack of director consent. There were no director meetings
18 to issue this stock, which means it had to have been done by
19 written unanimous consent under Nevada law and FTE's bylaws and
20 Mr. Cunningham has told this Court, you have his declaration,
21 he didn't know about it, and he didn't approve it. So that's
22 another issue with these newly amended and restated bylaws that
23 may pose a threat of void director action.

24 And the most apparent action that they're going to
25 take because they tried it with the shareholder meeting, tried

1 it with the appointment of (indiscernible) is to remove
2 Cunningham, and that is the most problematic provision of these
3 amended and restated bylaws. It gives Beys and De Silva the
4 ability to remove Cunningham for cause, but that is directly
5 contrary, as we argued during the TRO hearing, to Nevada law,
6 which never permits a director to remove another director. It
7 must be done by shareholders, and only shareholders can remove
8 another director. This again would result in void director
9 action.

10 FTE has also asked this Court that -- or tells this
11 Court that our request would ask this Court to make some sort
12 of a determination about the underlying TTP8 rights, but that's
13 not accurate. All that we want this Court to do is to maintain
14 the status quo of FTE. This Court is going to directly
15 confront the standing issues in a motion for summary judgment,
16 as I already noted, and there's no evidence as to why we
17 should, you know, not maintain the status quo until that
18 hearing.

19 It's also confusing to me as to why FTE wants this
20 Court to find some sort of waiver on the part of TTP8 by not
21 coming in as a plaintiff when it argues this Court has no
22 jurisdiction over TTP8, but that is beside the point because
23 all that we are asking this Court to do is maintain the status
24 quo, and we're doing it in four main ways.

25 Status quo request Number 1, do not act upon the

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 cancellation of the stock. FTE admits that it only canceled
2 TTP8 stock. They argue that to this Court, but then they argue
3 to this Court and to other Courts that that means Innovativ
4 stock is canceled too. Okay. Fine. Just maintain the status
5 quo. Whatever stock got canceled, don't act upon it until we
6 can determine whether that stock cancellation was valid.

7 Status quo request Number 2, don't mess with
8 Innovativ stock or shareholder rights in any other way. I wish
9 I could be more specific in that request, but every time I get
10 an order or I think this Court's intent was clear that it just
11 wants these parties to maintain the status quo and litigate the
12 case, FTE goes and does something else that I could not have
13 foreseen. So our status quo request Number 2 is just stop
14 messing with Innovativ shareholders' rights. Maintain the
15 status quo.

16 Status request Number 3, don't act under these
17 amended and restated bylaws. FTE did not identify anything it
18 feels that it needs to do under these bylaws. It didn't
19 identify anything that it cannot do under its current bylaws.
20 It's been operating with three directors, the same three
21 directors for years. It does not identify any new purpose for
22 these new bylaws other than that well, the shareholders wanted
23 it. Well, guess what, the shareholders wanted our bylaws
24 amendment too. That is all the more reason for a status quo
25 order.

JD Reporting, Inc.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 And then the final one is just to stop issuing
2 dilutive stock or don't issue dilutive stock. This one is we
3 have a caveat that I will address for this Court, but it is
4 unclear why FTE would be issuing stock to these new third
5 parties. It is delisted from a public stock exchange. It's
6 deficient on its SEC filing. It's in imminent risk of being
7 deregistered from the SEC. By its own admissions it is not
8 turning a profit. There is just no reason why it should be
9 issuing stock to third parties.

10 It did not issue stock since April 2021, and now all
11 of a sudden, if this bylaws amendment that they've done in this
12 month is any indication, they went out and issued a whole bunch
13 of stock after this Court's rulings against them without
14 director consent. And so we just want a status quo on that as
15 well until we can figure all of these issues out.

16 However, we do have an important caveat which is that
17 if there is some agreement or settlement or some reason why FTE
18 thinks it should issue that stock, come to the Court and get an
19 order, you know, just be upfront about it. You know, we're not
20 trying to stop FTE from operating business in the ordinary
21 course. We just want it to maintain the ordinary course, and
22 we want this Court to maintain the status quo.

23 So that brings me to my final point, which is have we
24 met the elements for preliminary injunction? Yes, we have. We
25 have demonstrated irreparable harm. I'm not going to go

JD Reporting, Inc.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 through it again because I know this Court is very familiar
2 with our arguments to that extent, but, you know, interference
3 with property rights, deprivation of a property right,
4 interference with the right to participate in corporate
5 governance, potential void director action. These are all the
6 irreparable harms that we have discussed, and these are not
7 speculative because FTE has already announced these actions
8 and/or has taken action upon them.

9 Second, we do believe we stand a likelihood of
10 success on the merits of our dec relief claim. There is no
11 question that the shareholder Innovativ and TTP8 whose stock
12 has may or may not have been canceled, they were shareholders
13 of record when they signed that bylaws amendment in
14 February 2022. Innovativ was definitely a shareholder of
15 record in February of 2022, and FTE's cancellation this month
16 would not work retroactively. The Delaware Court order is
17 instructed in that regard as well because it rejects this whole
18 retroactive deprivation of rights argument. You cannot
19 retroactively take away shareholder rights based upon unproven
20 allegations of fraud.

21 You already granted summary judgment in our favor on
22 the J stock claiming that it never had voting rights. So we
23 think that we have met the burden that we will provide --
24 prevail on our bylaws amendment, and as we've demonstrated, the
25 conduct that we are asking you to restrain directly affects it.

JD Reporting, Inc.

1 It affects our standing to pursue that bylaws amendment
2 validity dec relief claim.

3 You know, it the -- our bylaws amendment contradicts
4 what they're trying to do with them in the restated bylaws. We
5 think that we have met those elements of preliminary
6 injunction.

7 We have also filed, as we noted, a motion for leave
8 to file a supplemental complaint. That is in the process of
9 being briefed and will be heard by this Court that will
10 directly challenge FTE's actions, but contrary to FTE's
11 contentions, our argument today relates directly to the pending
12 claim before this Court; however, we think that we will also
13 likely prevail on our challenge to the cancellation. We think
14 that we will defeat the motion for summary judgment because we
15 do not believe that NRS 78.211 for all the reasons I set forth
16 already today would permit this.

17 We also think that we will prevail on our challenges
18 to the purported amended and restated bylaws agreement and the
19 issuance of the stock.

20 So we do think that there is a likelihood of success
21 for us on the merits, and FTE did not provide evidence related
22 to these stock issuances. So we don't even know if stock was
23 issued to these people as from the record before this Court,
24 the people who signed it have 19 percent of the voting power of
25 FTE, and it's not even valid.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 Third, the public interest and the balance of the
2 harms favor Innovativ. FTE doesn't even dispute that. Nothing
3 in their brief about this, and public interest clearly favors
4 compliance with Nevada law, and Innovativ is definitely more
5 affected by FTE's actions than FTE would be by simply
6 maintaining the status quo that it has been maintaining since
7 April 2021.

8 So that is what we're asking this Court to do. We
9 just want a preliminary injunction asking them to maintain the
10 status quo. That's all we are asking.

11 THE COURT: Okay. Counsel, in response, go ahead,
12 please.

13 MR. CEREGHINO: Yes. Thank you.

14 So what you heard just now was improper burden
15 shifting. FTE didn't provide evidence of this. FTE didn't
16 provide evidence of that. FTE is not the movant. It's not my
17 job.

18 Innovativ didn't provide evidence. I will attack
19 their inadmissible lack of evidence as I go through my
20 argument, but the point is they have not supported their burden
21 as the movant.

22 So we'll start with a summary. The same problems
23 remain. Number 1, Innovativ has no legal right to assert
24 claims that are specifically and uniquely reserved to valid
25 shareholders.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 Number 2, Innovativ has no legal right to seek relief
2 for TTP8.

3 3, Innovativ has no legal right as the case is
4 presently postured, and you just heard them admit there's going
5 to be a change in posture. Well, okay, we can get to issues
6 when it's correctly postured, but we can't put carts before
7 horses. It cannot seek relief that would deprive nonparty
8 shareholders of their statutorily protected rights.

9 4, The equal application of the law, which was
10 already decided by this Court -- you heard Ms. Shanks reference
11 it -- requires that the I Series also be treated as nonvoting.
12 That, that one aspect alone is the Jenga title that topples the
13 entire case.

14 The February 3rd bylaws amendment is invalid the
15 moment the same law and the same facts are equally applied to
16 get to the same result, which is that the I Series have no
17 voting rights. Done.

18 THE COURT: Is that before -- hold on one second. We
19 have someone who just added on. This is the only hearing we're
20 in the middle of, and I'm sorry. I'm pausing you for one
21 second because we had someone come on --

22 MR. CEREGHINO: Sure.

23 THE COURT: -- remotely and I want to make sure that
24 they're not --

25 Is that one of you all's clients? People are more

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 than welcome to observe. It's a public courtroom, but if
2 somebody else thinks that you have a different hearing, so
3 whatever that phone number is that ends in 2200, this is --

4 MS. SHANKS: That is, yeah, that is Mr. Coleman from
5 Innovativ Media Group, Your Honor.

6 THE COURT: Okay. No worries. Like I said, it's a
7 public courtroom. I just want to make sure someone didn't
8 think they had a hearing because you are the only ones on for
9 now.

10 Go ahead, please. Sorry, Counsel.

11 MR. CEREGHINO: No. Thank you, Your Honor.

12 THE COURT: So you were saying your fourth point
13 about the February 3rd and the I --

14 MR. CEREGHINO: Sure. The I Series, once we apply
15 the same exact law, which this Court made in the summary
16 judgment decision that Ms. Shanks referenced, which was the
17 March 8th, 2023, order, paragraph 18, the Court holds
18 preferred stock is only granted voting rights if those voting
19 rights are set forth in a formal written, resolution signed by
20 the Board of Directors. There is no formal written resolution
21 signed by the Board of Directors for the I Series to have
22 voting rights.

23 THE COURT: Is that before me today though?

24 MR. CEREGHINO: Yes.

25 THE COURT: And why are you saying that's before me?

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 MR. CEREGHINO: I say that because of the 11 -- the
2 November 7, 2022, preliminary injunction hearing order which
3 talks about at paragraphs 28 and 29,

4 The Court finds that Innovativ has
5 demonstrated a likelihood that the preferred
6 Series J-1 and J-2 shares have no votes that can
7 be counted towards the voting power.

8 Great.

9 29, While the Court is cognizant of the
10 factual disputes remaining of whether beneficial
11 owners can vote, what the A Series has,
12 et cetera, it says if there's a likelihood that
13 the Series J-1 and J-2 do not have voting
14 rights, then the bylaws amendment is valid
15 according to the vote calculation.

16 Great. It's just the inverse.

17 So the same analysis that the Court already did in
18 granting a preliminary injunction in November has to be done by
19 now as to the I Series because it goes to the likelihood of
20 their success on the claim.

21 THE COURT: That's what the question -- okay.

22 MR. CEREGHINO: They could have waited until the
23 motion for summary judgment, absolutely, and if we were here on
24 some other issue, like, for example, amendment, I would still
25 be able to raise it from a futility standpoint, but I could see

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 where the Court would say, no, no, no, that's not before us.

2 No. This is they have to show likelihood of success
3 on the merits. The merits of what? Not the merits of whether
4 the sky is blue, not the merits of whether speed limits should
5 be what they are, the merits of the claim, and there's only one
6 that's currently pending. The validity of the bylaws amendment
7 in February. That's what they have put at issue. So I get to
8 challenge it.

9 And as I challenge it, I go you have, in fact, not
10 even close to the requisite reasonable likelihood of success.
11 You have zero likelihood of success because all I'm asking for
12 is the equal treatment of the law for the same exact facts.
13 Once the I series is removed, the math is the math. We're
14 done. And I'll get to that a little later.

15 MS. SHANKS: I would just like to make an objection
16 for the record that this was not in the opposition brief. I
17 did not have a chance to respond to this argument. This is
18 newly raised. I will address it in my rebuttal argument, but I
19 would just like the record to be clear that this is an argument
20 that was not briefed in the briefs before this Court.

21 THE COURT: Counsel, in light of her objection, can
22 you please point me to the provisions in your oppositions if
23 you're asserting it was.

24 Are you asserting it was in your opposition, this
25 argument?

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 MR. CEREGHINO: I'd have to go back and relook. I
2 don't know that I -- I mean, I certainly challenged the
3 likelihood of success. So let me go ahead and try and pull up
4 my opposition.

5 THE COURT: I can do it at the end if you want to
6 complete. It's up to you.

7 THE COURT RECORDER: Judge, in the meantime.

8 Ms. Shanks, I don't know if she has a telephone on or
9 something. You guys can't hear it, but I have this constant
10 feedback in the recording.

11 THE COURT: Sure. Ms. Shanks, did you hear the court
12 recorder? You've got something going on in your background.
13 Do you have a phone vibrating?

14 MS. SHANKS: On it. No, I don't. I don't know what
15 that is.

16 THE COURT: An air purifier? Sometimes people have
17 air purifiers on or something like that that makes that noise.

18 THE COURT RECORDER: It's not that.

19 MS. SHANKS: I don't have anything going on. No.

20 THE COURT: Okay. Would you mind just keeping
21 yourself on mute while counsel is speaking. And then we'll
22 circle back. Thank you so much.

23 MR. CEREGHINO: So I don't think I specifically
24 raised the I Series. I will however note this was on an order
25 shortening time basis. So I only had a couple days to do it,

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 but it also doesn't change the fact that we have, in fact, in
2 other context talked about this exact issue which is now a
3 binding law of the case concept.

4 The I Series, just like the J Series has to have had
5 a formal written resolution. And because it didn't, they don't
6 count. It's simple.

7 So, if Your Honor wants to ignore that for today and
8 then we're going to deal with it at the summary judgment, fine,
9 but there are still other reasons why the preliminary
10 injunction cannot issue because it's not supported by competent
11 evidence, and the elements are not met.

12 So let's see here. So again, the issues are the
13 Court can't give relief as the claim's not before it that
14 adversely impact the parties not before it.

15 Now, I'd like to turn to that point. So Ms. Shanks
16 made an interesting statement: Cancellation of one is
17 cancellation of the other. Huh. Well, that's interesting.
18 Let's take that concept and apply it to what they're asking you
19 to do.

20 Judge, stop the other shareholders from doing exactly
21 what we did. Well, that's canceling the rights of the other
22 FTE shareholders. Those rights exist regardless of this case.
23 Those other shareholders have every right to do what they want
24 to do. We experience this every year or every two years in our
25 political system. That's the way politics works. One group of

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 people does something. Another group of people decide they
2 don't like it and later change it. There is nothing illegal or
3 even controversial about that concept. Those people have
4 rights.

5 So just because they are indirectly trying to impact
6 those rights doesn't mean they're not impacting them. They
7 are. So if they want to challenge that March 2023 bylaws
8 amendment, they can do what they concede they had to do, which
9 by the way they could have done before bringing this motion.
10 They could have done it parallel to bringing this motion. They
11 chose not to. Not my problem. Not this Court's place to fix.
12 Procedurally, it's wrong.

13 So if Your Honor wants to continue this until after
14 we -- that's fine too, but there can't be preliminary
15 injunctive relief when it's related to claims not before the
16 Court and parties not before the Court.

17 THE COURT: And, Counsel, the reason why I asked -- I
18 said at the beginning I was going to ask that question.

19 MR. CEREGHINO: Sure.

20 THE COURT: I'm hearing you say it in a summary
21 fashion.

22 MR. CEREGHINO: Sure.

23 THE COURT: So there is four -- it's asserted as four
24 claims, albeit one (indiscernible) remedy right.

25 MR. CEREGHINO: Uh-huh.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 THE COURT: But four claims before the Court.

2 MR. CEREGHINO: Not quite.

3 THE COURT: I said four claims, but one of them was
4 really a remedy.

5 MR. CEREGHINO: No, but that -- even that statement
6 is not quite right because Your Honor dismissed the election
7 claim back in June 30th because Innovativ doesn't have the
8 number of shares by itself, assuming that they validly owned
9 them, to trigger them. So that thing is gone.

10 So we're down to two, which was the shareholder list
11 demand, which Your Honor already gave them relief on. So we're
12 down to one. We're down to one claim, the declaratory relief
13 claim.

14 THE COURT: Well --

15 MR. CEREGHINO: That's it, and it's not about whether
16 someone has breached the bylaw amendment of February 3rd. It's
17 not about anything other than is it valid. That means what is
18 the math on February 3rd? That's the only claim. That's the
19 only claim. So how are we giving injunctive relief on things
20 that don't relate to what is the math on February 3rd?

21 We can do it after the Court grants leave to amend if
22 they've asserted a different claim, but, you know, the Court
23 (indiscernible) is bound by the claims and the parties that are
24 before it. That's it. It's pretty simple.

25 Right, and so here, in their reply, page 2,

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 paragraph 20, I'm going to go through the things they actually
2 are asking the Court to do:

3 Innovativ asks this Court to restrain FTE
4 from acting pursuant to the newly purportedly
5 amended and restated bylaws.

6 Great. That has to be rephrased to Innovativ asks
7 this Court to require FTE to ignore the validly effectuated
8 rights of other parties, of the other shareholders. That's
9 what they're asking you for. They can't do it. They can't do
10 that because it wasn't FTE that amended the bylaws. It wasn't
11 Mr. Beys that amended the bylaws. It wasn't Mr. De Silva, as
12 much as they want to point to that.

13 We have a pretty strong and lengthy tradition in
14 Nevada about corporate distinctions. Corporations can't do
15 anything except but through people. You can ask Mr. Coleman
16 that. Innovativ can't act except through Mr. Coleman or one of
17 its other employees. So Mr. De Silva did not do it. The other
18 shareholder entities did it, and they have rights.

19 THE COURT: But, Counsel, and this is where I have to
20 as the question; right? Because isn't there presently a
21 dispute before the Court with regards to the declaratory relief
22 component is what actually you keep on phrasing the math;
23 right?

24 MR. CEREGHINO: Right.

25 THE COURT: So was there a sufficient number of

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 individuals in your language, right, or people that did what
2 they did in March according to --

3 MR. CEREGHINO: Yes.

4 THE COURT: -- what your position is and how does
5 that -- how do you get there based on what is currently before
6 the Court?

7 MR. CEREGHINO: I don't need to because the claim
8 isn't before the Court. I don't have to give a free look to
9 Ms. Shanks at information she's not entitled to or her client
10 is not entitled to. I'm not basing the objection on the
11 validity of it. Yes, that is another reason, but that's not
12 the only reason. All I'm saying is there are people whose
13 rights they want you to curtail. It doesn't matter what the
14 right is. So whether they have a majority or not --

15 THE COURT: But every -- every injunction works that
16 way; right? I mean, think about it. Every injunction has --

17 MR. CEREGHINO: No.

18 THE COURT: -- it declares that the person can't do
19 it if people have knowledge of because you can't then assign
20 your rights to some third party to then do the very things that
21 the parties who are actually part of the complaint can't do.

22 MR. CEREGHINO: Which is fine, but completely
23 different than nonparty shareholders who have just been sitting
24 on the sidelines watching this nonsense. Again, it's like
25 Congress. There was a certain -- or a composition, a certain

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 number of Democrats, certain number of Republicans. Great.
2 And then the rest of us sit around and go, you know what, I
3 don't like what was happening. I don't think there's any Court
4 in the country that can say, you know what, we're canceling
5 elections. Until we figure out whether a prior election was
6 valid, we're just canceling elections for everyone going
7 forward. That's what they want.

8 Whether or not it's a majority is a different
9 question than whether these people have rights that are being
10 infringed. They do if you give them what they want.

11 I'm not asking you to decide that that is a majority
12 and it moots the whole thing. We'll get there, but right now
13 it's totally unnecessary, okay, but they have rights that are
14 being infringed. Can't do it. Until they have a voice; that's
15 called due process.

16 Let's see here. Secondly, it is absolutely clear
17 that Innovativ is asking for you to protect TTP8 who can't be
18 bothered to come in here. The reply, page 2, line 8:
19 Innovativ asks this Court to restrain FTE from acting upon the
20 cancellation of stock.

21 You'll note it does not say cancellation of
22 Innovativ's stock, which would be a different question. They
23 are attempting to protect every share that was canceled. By
24 definition, that means TTP8.

25 And look at what the TRO papers under

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 (indiscernible)have said at the emergency motion at page 3,
2 lines 22 to 24: Unless and until it is determined that
3 Innovativ's and any other shares FTE has purportedly canceled.
4 Of course, they're trying to protect TTP8. They say it
5 themselves.

6 At page 5, line 21. Instead, what FTE did was to
7 illegally and unilaterally cancel stock issued to TTP8. Well,
8 TTP8 can come in and complain. Absolutely. We canceled their
9 stock. Hundred percent. Dated a month ago.

10 Your Honor can see how much has been achieved in this
11 case in one month. Why can't TTP8 come in? They can assert
12 their rights, not the other people, not Innovativ. So
13 whatever, Your Honor, wants to do, if Your Honor is going to do
14 something, fine. Can't be the TTP8. They have chosen and
15 chosen and chosen and chosen not to come here. That's on them.

16 And you don't get to avoid a factual predicate just
17 by hiding, and that's all that's happening because they can't
18 give you any evidence.

19 And on a separate procedural technical note, yes,
20 TTP8 would, in fact, be required to a separate (indiscernible)
21 because their interests diverge from Innovativ's now that
22 Innovativ has asserted the bona fide purchaser defense because
23 the bona fide purchaser offense only arises when the person
24 asserting it says, yes, there was a problem with the underlying
25 transaction, but, no, it should not apply to me. So their

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 interests diverge.

2 So TTP8 has to come in here and explain itself. And
3 it's choice to not do that is TTP8's, and choices have
4 consequences.

5 Third, Innovativ asked this Court to restrain FTE
6 from taking any action which will interfere with Innovativ's
7 shareholder rights. And there again you go. You get back to
8 square one. So what, magically Innovativ is the only one that
9 has shareholder rights?

10 THE COURT RECORDER: Mr. Cereghino, you can't move,
11 please.

12 MR. CEREGHINO: Sorry. Sorry.

13 Innovativ does not have special license for some
14 superpriority shareholder rights. The rights that belong to
15 shareholders belong to others as well. It's that simple.
16 Can't interfere with other people's rights who aren't even
17 here.

18 But it also raises -- that statement also raises an
19 interesting question about, back to square one, does Innovativ
20 even have valid shareholder rights that deserve protection?
21 And again, the answer is no.

22 Now, again, this idea of standing, and, of course
23 Innovativ has standing to come in and sue. So right, the
24 procedure is no one can stop a plaintiff from walking in and
25 filing a suit. There is no prefiling screening unless someone

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 has been deemed a vexatious litigant. Plaintiff just gets to
2 hit the send button, and there we go. That's not the point.
3 After that there is a legal or a factual analysis as to whether
4 or not they are allowed to continue. That's what we're talking
5 about. They have no right to continue this case because
6 contrary to what they say they are, in fact, not a valid
7 shareholder.

8 Another question that statement raises about, we're
9 just asking you, Court, to stop them from interfering with
10 Innovativ shareholder rights. Again, which shareholder rights?
11 Okay. The Court has already interfered with and rejected one
12 of their claimed shareholder rights, the election demand. They
13 don't deserve it. Shareholder -- a shareholder gets, just like
14 a real property owner, a set of rights. There's not one
15 all-encompassing right. No, there's multiple rights.

16 One is if you have a conditional right if you have
17 enough shares you can demand an election. Great. Rejected.
18 They don't. Assuming that they even have a valid one, their
19 500,000 is not enough.

20 Two, well, let me just get to what they actually are
21 asserting. The right, the one right that is at issue in this
22 case is did they have a right to participate in a bylaws
23 amendment in February of 2022? That's the only right that's at
24 issue. No other rights have been triggered.

25 So now interestingly, I mean, what it really sounds

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 like they're complaining of is they don't like that a different
2 group of people did exactly what they did. They went, which is
3 their -- assuming they're a valid shareholder, they went off
4 with a group of their own other shareholders and decided to
5 amend the bylaws, and they didn't tell anybody about it. But
6 here's the thing. Don't have to. We're not making an argument
7 that they didn't give sufficient notice to other shareholders
8 or give notice to the FTE board that they were attempting this
9 bylaws amendment.

10 So again, equal application of the law is that these
11 other shareholders don't have to tell Innovativ what they're
12 planning, don't have to tell Innovativ that they don't like the
13 prior bylaws amendment, which they reject. They just went out
14 and changed them. Again, Republicans get together. They
15 organize an election campaign. They win. Great. And then the
16 next cycle, maybe the Democrats do it in reverse, and it goes
17 on and on and on. Nothing unusual. Nothing controversial.
18 Certainly nothing illegal.

19 Again, it's a -- it's a protect me, but don't let
20 anyone else do exactly what I just did, which is nonsense.

21 And then it says Innovativ is asking the Court to
22 restrain FTE from issuing stock absent Court approval. Why?
23 What's the legal basis? The contention is that this motion,
24 this one, not a different one, this preliminary injunction
25 motion is that it's required because their bylaws amendment in

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 February of '22 is valid. Well, okay.

2 Let's see what that bylaws amendment says and see if
3 it matters if that bylaws amendment is valid or not. And you
4 can -- they tell you what they want to have achieved in that
5 bylaws amendment in their amended complaint. Paragraph 17, it
6 says, No new issuances to insiders, insiders. Now, there
7 haven't been issuances. Ms. Shanks' speculation on that and
8 Innovativ's speculation on that is just wrong, but it's also in
9 evidence, but again, that claim isn't here. So I don't have to
10 say anything about it. But for purposes of the bylaws
11 amendment, it doesn't say no new issuances to anybody. It says
12 no new issuances to insiders. Okay. No poison pills. Great.
13 There haven't been any. No new voting rights. Okay. Great.
14 There haven't been any, but there's been no evidence of any of
15 those either.

16 Paragraph 18, all it says is the board shall be
17 limited to three people. It doesn't say one of which shall be
18 Mr. Cunningham. It just says three people. Okay. There are
19 three people, and that's it, and we gave you evidence from
20 Mr. Beys's declaration in the prior briefing.

21 THE COURT: Counsel, remember I've got to keep you
22 near a microphone.

23 MR. CEREGHINO: Sorry about that. I apologize.

24 THE COURT: No worries.

25 MR. CEREGHINO: But Mr. Beys declared there are only

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 three participating board members, one of which is
2 Mr. Cunningham. So that's not an issue.

3 Paragraph 19, the bylaws say they delete Section 5,
4 which relates to unspecified emergency procedures or powers.
5 Okay. Totally irrelevant. That's not at issue in this case.

6 Paragraph 20, all it says is there are no new
7 restrictions that will be placed on the transferability of
8 already issued shares. Okay. Well, A, that hasn't happened,
9 and there's no evidence that it has, but Number 2, that is
10 really what is known as the get out of jail free for the
11 Szkaradeks and Singal to circumvent the promises they just made
12 in the vision purchase agreement that they would not transfer
13 their shares that were issued to them to certain parties.
14 That's all that is. We want to undo the contractual promise we
15 made. This is the duplicitousness, nothing that FTE is doing.
16 FTE is trying to fight this kind of garbage. This is the
17 problem.

18 Paragraph 21 says it deletes Section C -- 6C in its
19 entirety. Well, I might be wrong. I looked through the
20 bylaw -- the underlying bylaws which these attempted to amend,
21 and there is no Section 6C. So that's irrelevant. There just
22 isn't. There's 6.1 C or 6.5 C, but there is no
23 6 parenthetical, C. So we can just cross that off the list.
24 Great. That has no bearing on whether they deserve preliminary
25 injunction relief.

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A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 Paragraph 22, this is the last thing the bylaws
2 amendment attempts to do, and somehow we have to get their
3 motion for preliminary injunction back to these, and it says
4 the board cannot modify or amend the bylaws. Okay. They
5 didn't. They didn't. What's the problem? All it is is
6 Innovativ isn't getting its way. That's not a legal basis for
7 anything. That is just complaining.

8 So there can't be any likelihood of success on the
9 merits of a claim that has nothing to do with what they're
10 asking for. There can't be any harm if none of these things
11 that they wanted to achieve are being violated. And certainly
12 not that they allege are being violated. None of these things
13 has happened, or no action has been taken inconsistent with
14 these.

15 Now, again, that assumes that they're valid. They're
16 not, but pretending that they are, nothing's happened. So why
17 do we need injunctive relief?

18 Again, what's happening is a political dispute
19 between two factions to control their country. That's what a
20 company is. It's the equivalent of a country which has
21 constituents, and this is a political fight over who has
22 control over it. That's all they are trying to achieve, and
23 they're trying to abuse the judicial process to achieve the
24 ends which they can't get correctly.

25 So now I'd like to turn back again to really square

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 one, which is Innovativ has no valid claim to any FTE shares.

2 Step one, there is no dispute that TTP8 did not
3 validly obtain its shares. TTP8 cannot, and nor can Innovativ
4 actually, who is a co-litigant with TTP8 represented by the
5 same counsel, cannot just take their ball and run and hide to
6 avoid some sort of factual determination. And again, I'm not
7 asking for this Court to make a legal determination as to some
8 sort of judgment in FTE's favor against FTE. That's not at all
9 what I'm asking.

10 We are asking for a factual determination, straight
11 up facts. That's it. There has been opportunity after
12 opportunity to dispute those facts. They have not been
13 forthcoming. The factual predicate is undisputed. TTP8 did
14 not validly earn a single share, a single one. Because here's
15 what the argument that is made in converse.

16 No, TTP8 should be given credit for these shares even
17 though it never paid a dime to anybody and even though it lied
18 to FTE that it had paid somebody. That's such an absurd
19 conclusion. It goes without even having to discuss. If they
20 paid for it, we'd have a different issue. They didn't pay for
21 it. That's not in dispute. That ends their claim to the FTE
22 shares. The fact that they also lied about it, because what
23 they said in the note exchange agreement and rescission
24 agreement was that they had by purchase obtained the shares or
25 the debt.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 Purchase, not we plan on it, not in the future we
2 have an obligation to pay. By purchase we own the debt. No,
3 you do not. And they never have. That is undisputed. So that
4 takes care of them. They're not entitled to get any different
5 outcome on that. TTP8 can handle their own business.

6 And by the way, a little into the evidence here, I
7 believe in the appendix that Exhibits 14 and 20 or 15 and 20,
8 Innovativ has magically seemed to be able to get from TTP8
9 certain documents, just not other ones, and we'll get back to
10 that, that say from Mr. Suwyn and Mr. Ferguson, yeah, yeah,
11 yeah, TTP8 owns the debt. That's what Innovativ has offered
12 them for.

13 The problem is what they actually say, which is there
14 is still payment outstanding. It was a conditional statement.
15 The condition wasn't met. Therefore, the statement is
16 ineffective. That's the first point.

17 The second point, Innovativ produced a text message
18 between Mr. Singal, I think, and Mr. Ferguson I believe. I
19 think that's -- excuse me, Exhibit 19 or 21. Exhibit 21 to
20 their appendix. Of course it has no time stamp that I could
21 tell. So -- and it's not been authenticated. So it's just
22 this text message. Okay. Great. So I object to its
23 inclusion.

24 But even looking at it without the time stamp, the
25 Court has no way of knowing whether Mr. Singal got pushback

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 from someone at FTE who then said, I know what I'll will do.
2 I'll get Mr. Ferguson to write me a little note. I'll lie to
3 him, and then I'll live to FTE, and there I'll get my shares,
4 which by the way is exactly what the man has been repeatedly
5 indicted for. Mr. Singal has been repeatedly indicted for this
6 exact kind of conduct. So there is no evidentiary support, nor
7 does the plain language of those two letters overcome the one
8 simple fact TTP8 never, still has not paid for that debt.

9 So what they want is a free lunch. They want their
10 shares for free. Sorry. Too bad, that's not the way that
11 works. But that's just TTP8.

12 Now we will turn to Innovativ.

13 THE COURT: In fairness, right, for balance of time,
14 right, so --

15 MR. CEREGHINO: I'm not far off.

16 THE COURT: So sum up, and remember you're kind of
17 going to things that aren't even before the Court in which
18 there's --

19 MR. CEREGHINO: I don't think so. This goes to
20 the -- this goes to their likelihood of success on the merits.
21 It goes to their harm. It goes to the balancing of the
22 interest. It goes to the public policy. All of it is tied to
23 whether or not Innovativ is valid. If they're not valid, they
24 have no success, none. If they're not valid, they have no
25 harm, not just irreparable, no irreparable harm, no harm

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 because they don't deserve the shares. If they have no valid
2 shares, the balancing of the interest is to protect the company
3 and its valid shareholders, not some fly-by-night thief. If
4 they have no valid shares, the public policy is the same.

5 THE COURT: Counsel. Counsel, to say in open court
6 somebody is a fly-by-night thief is really concerning. That's
7 why the Court was politely saying the first time, please focus
8 on the argument --

9 MR. CEREGHINO: Fine.

10 THE COURT: -- before the Court --

11 MR. CEREGHINO: Fine.

12 THE COURT: -- and --

13 MR. CEREGHINO: -- I retract that for purposes of
14 today.

15 Having said that, the argument is the same. If they
16 are not valid, all four elements which are required for a
17 preliminary injunction are defeated. All four, okay.

18 So turning to the bona fide purchaser argument, which
19 again is predicated on is a legally conditioned on, yes,
20 there's a fraud. That's the only time BFP comes up. Yes,
21 there's a fraud. No, it shouldn't impact me. That's the way
22 that works, and I have no obligation to prove any of the
23 elements. Innovativ does.

24 So let's see here. Let's go to Exhibit 26 of their
25 appendix, which is Mr. Coleman's declaration, and I object to

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 it under EDCR 2.21 and NRCP 56(c).

2 THE COURT: And where in your opposition did you say
3 that you objected to it, please? I didn't see the objections
4 saying --

5 MR. CEREGHINO: I didn't -- I didn't object to it
6 formally in this manner. I pointed out its substantive
7 defects, but I don't think I was required to object to it then.
8 I can object to it now, can't I?

9 THE COURT: Feel free to finish it. Go ahead,
10 Counsel.

11 MR. CEREGHINO: Sure. Because the issue is.

12 Each affidavit shall identify the
13 declarant, the party on whose behalf it was
14 submitted, the motion or application.

15 Fine.

16 Applications or affidavits in declarations
17 must contain only factual evidentiary matter
18 conform with the requirements of 56(c).

19 Great.

20 An affidavit used to support or oppose a
21 motion must be made on personal knowledge, set
22 up facts that would be admissible as evidence.

23 Well, there's the problem. Because if we look at his
24 declaration -- again, it's Exhibit 26, we'll read it. Sorry.
25 Nowhere does he say he has personal knowledge, right. Nowhere

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 does it say he is confident. One second, Your Honor, it's five
2 paragraphs long -- it's five sentences long. That's it. I am
3 the principal.

4 Okay. So what.

5 When Innovativ purchased its stock, no one from FTE
6 ever told me. Well, he's not the party, and he's not saying I
7 have personal knowledge of Innovativ's communications. All
8 he's testifying is about himself. So what? No one from FTE
9 ever indicated to me -- there it is again -- I was not aware.
10 It's not about him. It's about whether he has personal
11 knowledge of Innovativ's dealings.

12 But let's also go up to -- sorry. I'm going to keep
13 going. Paragraph 5, the last paragraph, Innovativ paid. Well,
14 I object to that one on the basis of *Foster v. King*, case which
15 is 487 P.3d 398, Nevada Appellate Court (2021).

16 THE COURT: And can you point where in the opposition
17 that was, please. What page?

18 MR. CEREGHINO: It's not in the opposition.

19 THE COURT: Right, but, Counsel, how then would they
20 have a chance in the reply to respond to those objections;
21 right? For the Court's purposes. You remember you can't bring
22 something up for the first time during oral argument; right?

23 MR. CEREGHINO: But in trial, if I object to a
24 document, I don't have to give an advance notice to every
25 objection I'm going to make to every document.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 THE COURT: But, Counsel, we're not in trial, right.
2 This is a preliminary injunction hearing.

3 MR. CEREGHINO: Right.

4 THE COURT: It's a pleading process. That's why the
5 Court is asking you. The Court has to determine what it can
6 and cannot take into account.

7 MR. CEREGHINO: Right.

8 THE COURT: In so doing, that's the reason why I
9 asked both counsel where it is in their respective pleadings;
10 right? Or if it's a new issue brought up for the first time in
11 oral argument for the Court to take into account what it can
12 and cannot actually utilize for purposes of whatever ruling its
13 going to make. So that's why I'm asking you the question, same
14 way I asked opposing counsel the question, okay.

15 MR. CEREGHINO: Okay.

16 THE COURT: I appreciate it.

17 MR. CEREGHINO: I respectfully disagree, but I will
18 move on to the substantive issue, which is --

19 THE COURT: Can you point me to the case --

20 MR. CEREGHINO: -- where is the check register?

21 THE COURT: -- law that says that you can raise for
22 the first time in oral argument case law and objections that
23 were not in the pleadings, Counsel?

24 MR. CEREGHINO: No. That's why I'm saying I'm moving
25 on to the substantive.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 THE COURT: Oh, no, you said you disagreed. That's
2 the reason why --

3 MR. CEREGHINO: I'm just stating -- okay. I'll say
4 it this way. I'm preserving the appellate issue on that
5 particular prevention of me discussing this. So I will --
6 that's aside. I will now talk about --

7 THE COURT: The Court is not preventing you from
8 discussing it. It's asking you -- remember, what I asked you
9 is do you have any case law or authority to support the
10 position that you can bring up new issues at the time of oral
11 argument that weren't in the pleadings? I just --

12 MR. CEREGHINO: I mean, I can -- I can supplement,
13 but no, I don't have any in my papers. I simply am trying to
14 cite to good Nevada law about the admissibility of evidence
15 that's been offered. I think I'm allowed to do that.

16 But I will move on to the substantive issue, the
17 defect, which is Mr. Coleman does not say he has personal
18 knowledge that Innovativ paid. He just says Innovativ paid.
19 But where is the check? Where is the ACH transfer? Where is
20 the journal entry? Where -- there is literally dozens of
21 documents that would support this. Why can't they give it to
22 you?

23 Here's the kicker. Payments are a two-way street,
24 and this one is between co-litigants. So let's pretend that
25 Innovativ had their dog eat their homework, their documents.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 They could have gone to TTP8 because they got other documents
2 from TTP8, and say, give us the canceled check. Give us your
3 books that show that we paid.

4 There is no evidence that anybody paid TTP8 for those
5 shares, certainly not admitted. That's the missing element.
6 Certainly on a preliminary injunction you -- that is a question
7 of fact at best for them. In fact, it is an undisputed. It's
8 just not supported. But at best there is a question as to
9 whether they paid. Therefore they don't get the BFP
10 protections. They don't get the consequential preliminary
11 injunctive relief because they haven't established the true
12 threshold question regardless of the kind of relief that anyone
13 wants to be given, whether it's summary judgment, whether it's
14 injunctive relief, whether it's something else. The first step
15 is, do they have a legal right? They have failed and failed
16 and failed to demonstrate that Innovativ has a legal right.

17 Let's see here.

18 And then in terms of whether they have notice of
19 claims, again, Mr. Coleman only says that he didn't have
20 awareness of claims. Well, that's -- he's different than
21 Innovativ. He didn't say Innovativ didn't have notice. Open
22 element. They don't get the benefit of the bona fide purchase
23 protection.

24 But more than that, the TTP8 transactions with the
25 underlying debt holders, which are in the exhibits that the --

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 14, 15 and 20 that Innovativ adduced actually say the time for
2 performance was January 31st, 2020. January 31st, 2020.
3 That is months before the May 2020 Innovativ purported unproven
4 purchase of the shares from TTP8.

5 It is also months after Singal, TTP8's principal was
6 indicted for securities fraud for claiming ownership of
7 properties to which he did not have title, the exact same kind
8 of transaction. So of course they had notice. Of course they
9 had notice of potential issues.

10 The second missing element. They don't get the BFP.
11 What they have to do is stand up and either demonstrate that
12 TTP8 did not -- or had a valid basis. Again, very simple, all
13 they had to do is show that TTP8 paid somebody. Can't do that,
14 won't do that, haven't done it, will never do it. So they have
15 to then default, which they concede to BFP, but they don't get
16 that either. That means they're not a valid shareholder. It's
17 simple. They're not a valid shareholder.

18 So because it's not a valid shareholder, it has no
19 right to sue for any relief. It has no chance of success on
20 shareholder specific claims. It has no chance of being harmed
21 because it's not a shareholder. It has no -- no interest in
22 the balancing because it's not one of FTE's shareholders.

23 The balance would be between a valid shareholder and
24 FTE, and the public policy is obviously only going to be for
25 protecting a company and its valid shareholders against the

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A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 incursions of invalid shareholders. Every single preliminary
2 injunction element is against Innovativ.

3 So and I've already mentioned the I series. Let me
4 just run through that math real quick. There is no dispute.
5 You can look at Innovativ's motion for preliminary injunction
6 on page 9 and 10 -- sorry. Let me back up. Again, the
7 paragraph 18 of the Court's order on March 8th, preferred
8 stock is only granted voting rights if those voting rights are
9 set forth in a formal written resolution.

10 Well, there isn't one. So you have to take the I
11 out. Now, let's do the math. Everyone agrees, and this is
12 giving credit to TTP8 and Innovativ. So I am not at all doing
13 this math taking away a single share from these people who do
14 not deserve them. 55.2 million, okay. That's the common
15 votes.

16 Now, it's actually different obviously based on the
17 cancellation, but for today, 55.2 million, and that is agreed
18 to by Innovativ.

19 Now, the A series, there's a dispute as to how many
20 votes, but just to make it easy, we'll use Innovativ's number.
21 I don't need the additional votes that the A series are
22 actually entitled to. Let's used 2.5 million. 55.2 plus 2.5
23 because neither the I nor the J get to vote is 57.7. To get a
24 majority of 57.7, you need at least 28.8, actually a little
25 higher. The Szkaradeks, they only assert 22.1 million come.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 The I don't get to vote.

2 THE COURT: Counsel, in fairness --

3 MR. CEREGHINO: I'm almost done, Your Honor.

4 THE COURT: I know. I know, but, Counsel, when the
5 Court asked you like 15 minutes ago to please wrap up, please,
6 okay.

7 MR. CEREGHINO: Okay. Okay. I just want to get
8 through this arithmetic, and then I'm done.

9 22.1 that describes (indiscernible) common.
10 5.2 million in common that are not described is 27.3. That is
11 1.5 million short of the \$28.8 million number that is -- the
12 million number that is required. Simple. It's not a majority.
13 We can decide today that that February 3rd bylaws amendment
14 was not valid, is not valid. It doesn't have a majority. It's
15 very simple. Thank you.

16 THE COURT: Thank you so very much.

17 Okay. You get last brief word, Counsel for movant.

18 MS. SHANKS: Yes. Thank you, Your Honor.

19 I am not quite certain where to start. I might jump
20 around. So I apologize.

21 I'll start with the math. In light of
22 Mr. Cereghino's admission that no new stock was issued, the --
23 a part of the amended and restated bylaws, even if you take out
24 the Series I, was only approved by 25 percent of the
25 shareholders of FTE. So that is a -- that's the math on the

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 new one.

2 I'm going to go to the protected purchaser argument.
3 Mr. Cereghino's started his argument by arguing to this Court
4 that companies can only act through people. They have to act
5 through people. They act through Mr. Beys and Mr. De Silva.
6 Well, Innovativ is a company, and it can only act through
7 people, and that person is Mr. Coleman. The argument that
8 Mr. Coleman doesn't have personal knowledge is directly
9 contrary to Nevada law. Under Nevada law, the knowledge of an
10 officer, agent or principal is imputed to the company. That's
11 the *Strohecker versus Mutual Building & Loan Association* case,
12 55 Nevada 350. That's *Bates v. Cottonwood Cove Corporation*,
13 840 -- 84 Nevada 388. That's the restatement third of agency,
14 Section 5.03.

15 I don't know what requirement there is that a
16 person's statement, "I paid for this," is not sufficient
17 evidence. I would dispute that, but I wasn't given the
18 opportunity to even provide the check and reply because I
19 didn't know that this would be an argument in opposition for
20 production.

21 Regarding the other elements, these are statutory
22 based. We've met the statutory elements, and we believe that
23 Innovativ is a protected (video interference).

24 Going to the TTP8 argument, it's pure speculation on
25 FTE's part at this point, and I can tell this Court that, that

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 TTP8 will not be challenging it. TTP8 is involved in
2 litigation in a different form in a different court. I don't
3 know what form TTP8 will challenge this, but I can tell the
4 Court that FTE's arguments are just red herrings and
5 speculation. And the argument that this is undisputed, that no
6 one has ever disputed this is so -- is so contradictory to what
7 we have filed. We gave this Court like a 600-page appendix
8 disputing that the TTP8 transaction was the product of fraud.
9 And, yes, because they are alleging to cancel Innovativ shares
10 based on that transaction, Innovativ has standing to challenge
11 their argument on the merits of that cancellation based upon
12 that failure. Those are the documents available to us.

13 We don't have other documents available to us because
14 FTE has them. So the argument that we didn't give the Court
15 everything is disingenuous at best. We've never been able to
16 get discovery from FTE.

17 As we noted, you know, but this Court doesn't have to
18 get TTP8. And we do believe that Innovativ is a valid
19 shareholder and has been a valid shareholder from the
20 beginning. That's why we're asking for the status quo order.

21 Going to the Series I. Series I was not briefed.
22 Had Series I been briefed in the opposition, we could have
23 provided this Court with some analysis.

24 This is the Pope versus China Holdings (phonetic)
25 case. We did talk about it in the Series J motion for summary

1 judgment.

2 Pope versus China Holdings is where Nevada deviated
3 from Delaware law. So in Pope versus China Holdings, there was
4 not a formal director resolution approving a merger, and the
5 question was, Does there need to be, and the Nevada Supreme
6 Court said no because there's no evidence that the board did
7 anything in contradiction to what we have in the moving papers
8 before us, to what we have in this merger agreement and to what
9 we have in the public announcements. There's no contradictory
10 evidence. The board approved the merger, and nobody questions
11 that.

12 What Pope, as we pointed out in our Series J motion
13 for summary judgment, Pope did not breach and did not address
14 the question.

15 THE COURT: Uh-oh. Okay. Counsel. Counsel, I'm
16 going to stop you for a quick second.

17 MS. SHANKS: Okay.

18 THE COURT: You started to address, as you address in
19 your summary judgment motion. Remember the summary judgment
20 motion is not before the Court today. So to the extent if you
21 are responding to statements made in oral arguments that
22 counsel stated that were not in his opposition, it's going to
23 be fine, but we can't get into standards with the summary
24 judgment that's not before the Court right now. I appreciate
25 it. Thank you.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 MS. SHANKS: Right. And I'm not. And I'm not
2 raising this argument to state that we want this Court -- we
3 don't think that this is properly before the Court. We do want
4 the Court to know that we have good faith arguments under
5 Nevada law that the Series I was validly issued with voting
6 rights, and we would have addressed it had we been given the
7 opportunity, but we weren't. I do agree that that is not
8 before the Court, and there's no evidence. There's no physical
9 evidence before the Court that there's not voting rights, and
10 that should not be considered.

11 You know, we again are faced with this sort of
12 circular argument from FTE that, well, don't deprive these
13 shareholders of their rights who voted to amend the bylaws, but
14 do deprive the other shareholders who voted to amend the bylaws
15 of their rights. And do deprive them of their stock rights. I
16 mean, it's a very circular argument. Whose shareholder -- what
17 shareholders get rights? Apparently only the shareholders that
18 FTE wants to recognize.

19 I would note that there are some misstatements of
20 fact regarding Mr. Singal. He was not criminally indicted in
21 December of 2019. Beside the point, that was a civil lawsuit.
22 It involved a wholly different company, a wholly different
23 transaction, did not relate to FTE in any manner at all and did
24 not relate to FTE's stock. So it would not have put Innovativ
25 on notice of adverse claims to the stock being issued to it,

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 which is the protected purchaser element, NRS 104.8303. Did
2 they provide compensation? Were they on notice of the claims?
3 And did they get title? And the answers to all of those are
4 yes.

5 This argument that TTP8 was never a purchaser is also
6 contradicted by the evidence in the record where you have this
7 agreement was first entered into in November. All three -- the
8 TTP8's agreements with third parties and with FTE get entered
9 into November 2019.

10 FTE saw the agreements that TTP8 had with third
11 parties. It didn't raise the argument that oh, this is for
12 future, you know, you haven't performed under these, and
13 therefore you can't get the stock. No, it rescinded that prior
14 agreement, not because of that, but because they violated the
15 20 percent (indiscernible) rule, and entered into it again.
16 And we gave this Court e-mails of FTE making it very clear that
17 FTE did look at this and did determine that TTP8 was a
18 purchaser.

19 So what FTE is doing now is it's saying because there
20 may or may not have been a breach in the agreement between TTP
21 and a third party where there wasn't a breach between us, we're
22 going to, quote, take that separate agreement and provide it as
23 a basis to present. That's sort of the argument that they're
24 making, but this Court doesn't have to get into it because
25 there is no question that Innovativ and TTP8 were shareholders

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 of record at the time of the bylaws, and I don't want to beat a
2 dead horse. I've already explained all the ways that our
3 current request relates to our pending claim for declaratory
4 relief. Again, we are just asking for a status quo order.
5 That's it.

6 THE COURT: The Court's got a couple of questions.
7 Status quo order. Status quo as of what date? Because since
8 the claim, right, in the operative complaint, right, focuses on
9 things from February. And then you assert that there's actions
10 that have changed the status quo from your allegations or
11 assertions or contentions or however you'd like to phrase it in
12 your motion for preliminary injunction occurred in March
13 of 2023. What is the date that you're stating that you're
14 asking for a status quo as of?

15 MS. SHANKS: Well, it's hard to provide a specific
16 date. We aren't certain when some of these actions happened,
17 but we -- when we look at what we're asking, we -- the status
18 quo on don't act on the cancellation of the stock, that would
19 be a status quo back to the date that this complaint was filed
20 essentially because Innovativ was a shareholder at that time.

21 The issuance of new stock would just be from here
22 forward.

23 The bylaws amendment, don't act under it would be
24 from the date that that was announced forward.

25 And I guess arguably the cancellation would be from

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 the date that the cancellation occurred forward, right. Like
2 up until this month or maybe February, we're not quite certain,
3 of 2023, that was the status quo. Innovativ was a shareholder
4 of record. We were trying to figure out the merits. There
5 weren't these newly, you know, they weren't trying to unwind
6 everything that we have been litigating so hard to get
7 determined by this Court. You know, they were making efforts
8 to remove Joseph Cunningham, but the status quo as to that has
9 been for years now.

10 So that's really what we are looking for is a status
11 quo until such time as we can determine the merits of our case,
12 and if this Court grants us leave to supplement, the validity
13 of what's going on in those claims, but for today's purposes,
14 it's really just can we figure out the merits of the bylaws
15 (video interference).

16 THE COURT: Okay. The reason why the Court is asking
17 the question, the Court asked a question somewhat similar at
18 the time of the TRO hearing is are you asking that the actions
19 taken in March that you assert were taken in March, okay, and
20 you heard counsel in opposition said certain actions weren't
21 even taken because he said there wasn't even a 6C, but, okay,
22 are you asking that the preliminary injunction be viewed as
23 prior to that date so it was as if those actions did not occur?

24 The reason why, I was looking at your different
25 prongs of relief request, and I was looking at the first one

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 versus some of the subsequent ones, and it was unclear. Can
2 you clarify what scope of relief you're asking for.

3 MS. SHANKS: Yeah. So we're asking that they not act
4 upon the cancellation that purportedly occurred in March. We
5 are asking that they not do anything from the date of any order
6 forward to interfere with Innovativ's shareholder rights
7 because I'm tired of filing emergency motions on that. We are
8 asking that they not act under those newly amended bylaws that
9 were done in March.

10 THE COURT: Okay. That's where I'm going to have to
11 stop you because your 1 and 3 seems to this Court somewhat
12 inconsistent, okay. The reason why the Court is saying that is
13 because if acting upon wasn't one of the actions by which you
14 are contending should not have occurred in your preliminary
15 injunction, what is being phrased as a cancellation of
16 Innovativ stock. So if you're asking it prospectively not to
17 take further action, then are you saying it is canceled, and
18 then I -- there's a standing issued, or are you --
19 (indiscernible) your Number 1 and your Number 3?

20 You may have a different order of what you're trying
21 to get across to your request, but I need to ask you how it is
22 being viewed when I was reading it and listening to everybody's
23 oral argument, everybody's pleadings and everybody's oral
24 argument. Go ahead, please.

25 MS. SHANKS: We don't think that there is a standing

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 issue, Your Honor. We don't think that the cancellation was
2 valid. And so we think that any actions upon it would be
3 invalid, and so that is why we are asking them, you know,
4 don't -- don't continue to act upon this cancellation.

5 Now, I know that that is being briefed before this
6 Court. So that preliminary relief may very well be decided
7 very quickly because that -- there is a current motion before
8 this Court on it.

9 So but what we are saying, we're not conceding that
10 there is a standing issue. We absolutely don't believe that
11 there is a standing issue. We do not think that a corporation
12 can unilaterally cancel shareholder stocks under the
13 circumstances that FTE has done it, and what we are doing is we
14 are asking this Court to restrain FTE from doing anything that
15 further interferes with the property right of Innovativ.

16 THE COURT: Okay. Once again, sorry if I'm not being
17 clear on my question, but when I get the further, right --

18 MS. SHANKS: Right.

19 THE COURT: -- so are you stating that Innovativ
20 concedes that the shares were canceled, and you're fine with
21 that, and that the status quo should be as Innovativ is in a
22 canceled state and just nothing further is happening, or are
23 you saying that the shares should never have been canceled or
24 some third option? I'm not limiting you to those two; it's
25 just -- that's why I'm trying to get a clarification because

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 when you use the term, right, further action and things that
2 happened on March 14th, it's not clear what you are asking
3 specifically of the Court under the standards of a preliminary
4 injunction.

5 MS. SHANKS: Oh, certainly. We don't think that the
6 shares were ever canceled, and we don't think that they should
7 act as if they were. That is -- that is our position, that
8 that was not a valid cancellation, and FTE should not take any
9 action upon that cancellation as if they were canceled.

10 THE COURT: And I've got another question. Your
11 third prong, I'm looking at your reply and evaluating all of
12 this, right, third prong, taking any action upon votes of
13 shareholders for stock issued after the bylaws amendment until
14 such time the validity of those stock rights are determined.
15 In light of the statements of counsel in open court, appreciate
16 there may or may not be things in the actual pleadings.

17 Is that a request or is the scope of the request if
18 it is a request can you please further explain?

19 MS. SHANKS: Well, so we get this bylaws -- amended
20 and restated bylaws, Your Honor, and we go how possibly could
21 this have been, and then Mr. Cereghino gives us this written
22 shareholder consent, and I cross-reference it with the
23 shareholder list I have, and they're not shareholders of
24 record. So we go either of these are not signed by
25 shareholders of record, or they issued a bunch of stock. And

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 it looks like the stock would have been issued to people that
2 would have violated our bylaws amendment if valid.

3 So Mr. Cereghino today says that no stock was ever
4 issued. Okay. If that's true, but I don't have proof of that.
5 And why would a corporation, why would all of these people be
6 signing this if they weren't given stock? It's a very weird --
7 I don't understand it. I understand Mr. Cereghino's position
8 that it's not his place to prove it, but he is in a position of
9 greater knowledge than me, and that information just has not
10 been supplied to us.

11 So when we are asking them not to take any further
12 action on these votes, we're really trying to say, you know,
13 don't, maybe, you know, just follow Nevada law. If they're not
14 shareholder of record, don't let them vote for things, and if
15 they are shareholders that you did issue stock to, then let's
16 not keep running in circles around each other and fighting over
17 this. Let's do a status quo and figure out if this original
18 bylaws amendment is valid or not because that is going to
19 directly relate whether or not these shareholders validly have
20 stock.

21 THE COURT: Is that not subsumed in Subpart 2 though,
22 taking action to interfere with Innovativ's shareholder rights?
23 Isn't three and four subsumed within that, or are you seeing
24 those distinct?

25 MS. SHANKS: I think that those are subsumed in it.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 I just was concerned that if I wasn't incredibly specific they
2 would do it.

3 THE COURT: Okay. Those are the Court's questions.
4 Okay.

5 So did you have an opportunity to finish? I thought
6 you had finished before I asked my questions, but I'll just
7 make sure. Same thing as I asked opposing counsel. Did you
8 have an opportunity to finish?

9 MS. SHANKS: Yes. Thank you, Your Honor.

10 THE COURT: Okay. So here's what the Court has
11 before it. The Court has before it plaintiff's motion for a
12 preliminary injunction, Document 227 with the appendix document
13 228, the OST, Document 232, defendant's opposition document 234
14 and the reply Document 236. So that's the only issue the Court
15 has before it is a motion for preliminary injunction. The
16 Court does not have before it today summary judgments, motions
17 to amend or other things that may be coming down on future
18 dates but are not before the Court today.

19 So the Court in making its ruling, a couple things,
20 let's be a hundred percent clear on. First, the Court can only
21 take into account and is only taking into account what it can
22 take into account based on case law, rules, statutes and other
23 evidence for purposes of the present motion before the Court.

24 Next, so the first issue, I'm going to do it in this
25 particular order is whether or not, it's been phrased two

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 different ways, whether, A, the Court has jurisdiction, slash
2 standing. So those really are two distinct concepts.
3 Realistically, this Court has jurisdiction. That's never been
4 challenged in the pleadings on this motion for preliminary
5 injunction that this case is here in Nevada. It's dealing with
6 the parties to this case within the concept of a standard for a
7 motion for preliminary injunction.

8 Okay. So here's what the Court is going to do. So
9 the Court does have jurisdiction over FTE and can determine
10 whether Nevada law permits certain actions. That straight
11 NRS 78 and lots of the subsections therein, okay. So that is
12 dealing with the jurisdictional concept.

13 So the next concept distinct from that is Innovativ
14 does have standing the Court finds. Innovativ, as is set forth
15 in the briefing, with citations thereof really do apply here.
16 *Heller versus Legislature of State of Nevada* 120 Nevada 456
17 (2004), Nevada Courts are bound by the federal standing
18 principle to draw from the case a controversy component of the
19 United States Constitution.

20 Here, standing for purposes of Nevada law requires
21 that Innovativ had the legal right to set the judicial
22 machinery in motion *Roethlisberger versus McNulty*, 127 Nevada
23 559 (2011).

24 So here you also look at NRCP 17 (a) which requires a
25 showing that Innovativ did possess the legal right to enforce

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 the claim and has a significant interest in the litigation,
2 which also is a citation to Szilagyi, S-z-i-l-a-g-y-i, versus
3 Testa, T-e-s-t-a, 99 Nevada 834 (1983).

4 So the issue here is you have to look at the
5 operative complaint, Innovativ's operative complaint, and it
6 has to show that there is, one, the justiciable controversy
7 between it and defendants, right, not just a single defendant,
8 but defendants, and a legally protectable interest in that
9 controversy as well as that the issue is ripe for judicial
10 determination. That's *County of Clark versus Upchurch*, 114
11 Nevada 749 (1998).

12 As you know, the analysis, and you all don't disagree
13 with the underlying concept of what are the standards.
14 Something that's justiciable that is an actual present or
15 existing dispute; B, between parties having genuine opposite
16 interest; and C, which involves interest that must be direct
17 and substantial and D, will result in a final conclusive
18 judicial determination *Hornish versus King County*, and that's a
19 federal citation to Ninth Circuit which the Court -- Nevada
20 courts do look to the federal courts with regards to certain
21 case law, which would include here 889 F.3d 680, Ninth Circuit
22 (2019).

23 So the underlying dispute you agree is whether or not
24 particular February bylaws amendment is valid. That issue is
25 not yet fully resolved, but, yes, it is an issue that is at

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 issue before the Court and what the Court has to look at. The
2 Court has to look at it based on the laws thus far of the case
3 that at least at this juncture there has not been disproven.
4 So I have to treat Innovativ as a shareholder of record on
5 February 3rd, 2022. That was Exhibit 32 set forth, okay, in
6 the pleadings.

7 So now the Court looks at which FTE also looked at is
8 whether or not there is a legal protectable interest, and this
9 goes to the TTP8 issue. Realistically, the Court is focusing
10 on Innovativ stock because that is the party to this case.
11 While there is dispute between the parties of the role between
12 TTP8, individuals related to TTP8 and individuals related to
13 Innovativ, at the present structure of where the case is when
14 I'm looking at this at the preliminary injunction standard is
15 Innovativ is shown to at least have stock for purposes of
16 preliminary injunction analysis, and that is a personal
17 property right under NRS 78.

18 So therefore, what you can't do is FTE or any other
19 entity wouldn't be able to in the middle of litigation somehow
20 try and eliminate a party, so in this case Innovativ's rights
21 by somehow trying to cancel their stock. In fact, I've cited
22 those by analogy, not a precedential case by analogy, the Fifth
23 Circuit. It addresses issue. They did apply Nevada law in
24 *Arthur W. Tifford versus Tandem Energy Corp.*, 562 F.3d 699,
25 Fifth Circuit (2009). So there it's stated that the

1 shareholder couldn't lose standing merely due to cancellation
2 of their stock when they're potentially a protected purchaser.
3 So they had the interest that gave them a stake in the shares
4 of the real and substantial party to the controversy. So
5 therefore that prong is met.

6 And then, of course, it's ripe. You all have had
7 excellent briefing, excellent oral argument, and you've
8 definitely shown me that it's ripe because, realistically,
9 there has been a variety of different issues showing that these
10 are a hotly contested issues that need to be resolved by a
11 Court ultimately.

12 So there's nothing that -- so it is sufficiently
13 concrete. It is not remote or hypothetical. So therefore it
14 is ripe under *Herbst Gaming versus Heller*, 122 Nevada 877
15 (2006).

16 So the Court in finding that Innovativ does have the
17 appropriate standing now looks to the fact of whether or not
18 the motion relates to claims before the Court, and that really
19 goes to the complaint, but really the Court does find it's
20 related to the complaint because the issues are arising from
21 what is the declaratory relief. Remember, we have a *Buzz Stew*
22 analysis in that, right, with giving notice of what the
23 contention is. You can't super ordinarily read that. Have to
24 read the complaint as it is the operative complaint.

25 So then you look at whether or not I have to address,

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 and I already address, realistically, a lot of the TTP8 issues.
2 That is not necessarily before the Court for purposes of this
3 preliminary injunction because when I get to the scope of the
4 preliminary injunction it will be clear that it is going to the
5 parties to this case. So therefore we have the issue of also
6 with ripeness (indiscernible) the universal -- the unilateral
7 canceling of stock, whether or not it was proper or not proper.
8 Realistically, that's going to go to some of the various
9 standards with regards to whether or not the injunction should
10 be done.

11 So now let's go to the standards for an injunction.
12 Will Innovativ suffer irreparable harm? The Court finds, yes.
13 Realistically, the irreparable harm is, that is shown, is that
14 Innovativ could lose all of its rights with regards to stock,
15 which at this juncture, subject to issues that have not yet
16 been resolved, same thing, I'm going to cite the Delaware case,
17 the Court case, which I cited in the TRO, mentioned at the TRO,
18 presented to me at the TRO and similarly also before me also at
19 the preliminary injunction as well as this Court. Just because
20 there's issues at present as to the validity of this stock at
21 this juncture, those issues have not been resolved one way or
22 another.

23 So the Court has to take the fact that Innovativ will
24 be irreparably harmed if it loses all of its stock that it
25 contends it has. And that also Innovativ would be irreparably

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 harmed because it doesn't get to participate in any of the
2 corporate governance or do anything with regards to what you
3 would otherwise be able to do as a stockholder. So and also
4 the aspect of personal property, and it's a unique personal
5 property; right? It's not something that is necessarily not
6 unique.

7 So then you do look at the balance of hardships of
8 public policy. Public policy and the balance of hardships also
9 favor Innovativ because, realistically, what we're looking for
10 is a status quo injunction. One of the reasons the Court asked
11 those series of questions with regards to the scope was being
12 asked is to see is it trying to gain any type of advantage with
13 regards to litigation, or is it merely status quo?

14 The Court really sees it as status quo. You all have
15 been in here enough times with regards to the outstanding
16 issues in this case so that they can ultimately be resolved
17 when you're set for trial or prior motion practice. And
18 realistically, if you need an earlier trial date, no way taking
19 any positions with regards to any pending motions that are not
20 yet before me, we could accommodate that, but you all set the
21 schedule you wanted in your JCCR which was adopted at 16.1 and
22 became part of your trial order, but realistically, the balance
23 of hardships, I'm not seeing any hardship to FTE. There's not
24 been -- Innovativ has stated for its hardships all of the
25 issues. It was lack of corporate governance. It's not ability

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 to move forward. It's not knowing the status of stock that it
2 thinks it owns. It's not being able to participate or do
3 anything with regards to personal property.

4 Hardship with regards to FTE at this juncture does
5 not seem to be anything. I'm not saying that they're anything
6 that was precluded from being done, anything that could be
7 deemed (indiscernible). So the Court does have to look at the
8 balance there. The balance does favor Innovativ.

9 Public policy. Well, public policy is going to favor
10 Innovativ as well. We've got a Nevada statute right on point.
11 NRS 78, compliance with that. That's a huge public policy.
12 That the legislature has determined, right, that that's a
13 statutory requirement here in the state of Nevada, and so
14 compliance with statutory requirements are huge public policies
15 that do favor Innovativ. The public policy in general of
16 trying to change things and try and change the status of
17 litigants in the middle of litigation despite there already
18 being orders from a Court, realistically, public policy there
19 also favors that FTE cannot do that and that public policy to
20 maintain the status quo goes in favor of Innovativ.

21 So therefore you have to look at the applied correct
22 application of Nevada corporate law and the governance aspects,
23 and those go to both to Innovativ. So both the balance of the
24 hardships and the public policy also favor Innovativ.

25 So then you look to have all the standards been met.

1 Is there anything else the Court should take into
2 account with regards to a preliminary injunction?

3 And as a note to the Court mentioned a moment ago but
4 did not cite, *Dixon versus Thatcher* I should have cited 4103
5 Nevada 414 (1987), where it talks about the interference with
6 property rights is irreparable harm and warrants equitable
7 relief, and the Court was saying that the property was unique.
8 I meant to reference *Dixon versus Thatcher* at that point, but I
9 haven't. So I'll go back and go to that.

10 So then you go to all the standards being met at the
11 preliminary injunction should issue and will issue, the Court
12 is going to find.

13 Now, the scope of the preliminary injunction, that's
14 where the Court needs to address a couple of things. First
15 with regards to the request that since there's already \$30,000
16 that has already been put away for bonds, the 5,000 of the TRO
17 and the prior 25,000, the Court is not going to find that an
18 additional bond is necessary because the Court is going to find
19 because FTE it really hasn't shown that there's any harm or any
20 issues. 30,000 should more than take care of it with regards
21 to the various stockholders, and no, the Court is not returning
22 the other 5,000 because, realistically the Court is finding
23 that the totality of the 30,000 would be appropriate. So
24 therefore, realistically, that total amount would be
25 appropriate for purposes of a bond in keeping that amount

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 since, realistically, you could view that the TRO was expiring
2 tomorrow and whether the 5,000 would be returned pursuant to
3 that.

4 The Court is saying, no. The Court is saying, no,
5 that (indiscernible) is going to stay, and I'm viewing that as
6 part of the bond for the total of 30,000. And even if you
7 considered it only in the TRO amount, it still would be
8 sufficient because of what has been presented to this Court in
9 the pleadings, and in taking into account the entirety really
10 of everyone's oral argument and taking into account the
11 objections thereto.

12 So now let's go to the scope. So since the Court has
13 found that a preliminary injunction should issue, the Court now
14 has to look at the scope and what is the actual relief that can
15 be requested and granted pursuant to a preliminary injunction.
16 So there was four prongs. I'm going back to those prongs just
17 so we can get that taken into account.

18 One second, please.

19 Okay. So the first one is -- the request is that the
20 preliminary injunction include that FTE Networks, FTE and any
21 of its agents, officers, affiliated entities, employees and/or
22 successors and assigns are prevented from taking any action
23 under the terms of the amended restated bylaws purportedly
24 amended on March 14th, 2023, including, but not limited to
25 the appointment of new directors.

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A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 The Court is going to find that that is an
2 appropriate -- part of an appropriate scope of a preliminary
3 injunction. And the reasoning being everything the Court
4 previously said and taking whether you want to call it
5 self-help measures or whether you want to take it -- actions or
6 however you'd like to phrase it, but what would happen in
7 March, right in the middle of litigation, which could be viewed
8 as arguably, it was even argued by both sides, change the
9 posture of the current case, realistically does need to be
10 enjoined, does need to have to go back to the status quo.

11 Once again, there wasn't anything -- all the elements
12 that the Court already looked at is there's not seeing that
13 there's any harm for that for the preliminary injunction as
14 well.

15 So then you take 2. 2 is taking any action to
16 interfere with Innovativ's shareholders' rights. With that
17 limitation, the Court is going to find it's appropriate. The
18 Court finds Innovativ is a party before this Court. Nobody's
19 disagreeing with that. So Innovativ's shareholder rights, and
20 that means Innovativ's shareholder rights at the various times
21 since the litigation has commenced because you have various
22 orders of this Court which already addresses certain aspects of
23 that. And so therefore that is maintaining the status quo, and
24 therefore it would be appropriate to make sure there's no
25 action taken to interfere with Innovativ shareholder rights.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 The third prong is requesting taking any action upon
2 the votes of shareholders for stock issues after the bylaws
3 amended until such time related to those stock rights are
4 determined. Here lies the challenge because, realistically,
5 it's been stated that there hasn't been anything other than the
6 potentiality with regards to the director, but that's already
7 addressed in 1.

8 So the Court would view that the actions requested in
9 3 are subsumed in the Court's granting the actions with regards
10 to Innovativ shareholder rights. The Court in its last
11 statement is in no way expanding to include nonparties;
12 however, as the parties know, and the case law clearly shows,
13 preliminary injunctions do include agents, officers, affiliated
14 entities, employees and successors and assigns because you
15 couldn't assign everything to some third-party and somehow you
16 get around a preliminary injunction. And, obviously, as you
17 both have stated, entities act through individuals, and those
18 individuals can be agents, officers, employees, et cetera.

19 So therefore the Court doesn't find that three is
20 independently appropriate because to the extent it applies to
21 Innovativ shareholder rights, it's already taken into account
22 with regards to Point 2.

23 Number 4, issuing any further stock without prior
24 permission from this Court, at this juncture, realistically,
25 the Court is going to modify for and say to issue any stock

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 that would somehow dilute or interfere with Innovativ's
2 shareholder rights without having some issue brought before
3 this Court with regards to that aspect if there is a question
4 about whether or not that is or is not going to happen. And
5 the reason why the Court is doing that is because to the extent
6 that there may be some good cause work, fine, but what we want
7 to prevent is that it needs to be consistent with the
8 interfering with Innovativ's shareholder rights.

9 And so therefore, if there is stock that would be
10 issued that would interfere and dilute Innovativ shareholder
11 rights at some point while this preliminary injunction is in
12 effect, it really would eliminate the very actions that the
13 Court was saying is taking into account in subparagraph 2, but
14 to make that clear so that there isn't any issues, the Court is
15 also doing a modified version of 4, which really is now going
16 to become the third prong of the injunction.

17 So the Court has said the various three bases on
18 which the injunction shall issue.

19 The Court for the purposes of since the bond is going
20 to be held and continued instead of being released tomorrow,
21 that what the Court is going to do is obviously this injunction
22 is going to be valid upon presentation of an appropriate order,
23 right, and notice of entry order thereof; however, the Court is
24 cognizant in this juncture, and here's where I have a question
25 for the parties. Under the terms of the TRO, it does expire

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 tomorrow. I am appreciative that the parties may need more
2 than this afternoon to walk through the language in a
3 preliminary injunction order.

4 So we've got a couple of choices. If there's an
5 agreement by the parties that the oral statements of the Court
6 can be viewed as if they were memorialized in writing under
7 *Rust versus Clark County and Division of Family Services*, then
8 the Court is going to ask you to what date you want that. If
9 somehow you are going to say that you wanted the TRO extended,
10 then that's a different thing.

11 I need to hear what the parties want to do because I
12 want to make sure that everybody is on the same page so that
13 realistically no one inadvertently has some unintended
14 consequences, right. So let me hear what the parties would
15 like to do, and if there's not an agreement, then the Court
16 will have to determine what it needs to do.

17 Counsel, you're standing up for FTE --

18 MR. CEREGHINO: Sure.

19 THE COURT: So let me hear your position first. Go
20 ahead, please.

21 MR. CEREGHINO: I want to make this as smooth as
22 possible. I mean, we're not going to object to some gap in
23 time. We're not going to do any actions in potentially some
24 gap of time. However, Your Honor and Ms. Shanks want to handle
25 it, I don't care.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 THE COURT: Well, you see it --

2 MR. CEREGHINO: But I am recognizing that the same
3 issues -- there's no -- to my mind, there's no time gap. So
4 we'll just roll through.

5 THE COURT: Okay. So let's hear what Ms. Shanks
6 proposes and see if you're in agreement with that, okay.

7 Counsel, does that meet your needs? Does that meet
8 your needs?

9 MS. SHANKS: Yes, Your Honor, that would (video
10 interference).

11 THE COURT: Go ahead.

12 MS. SHANKS: Yes, and I'll get the order drafted as
13 expeditiously as possible.

14 THE COURT: So, Ms. Shanks, let me hear what your
15 request is because then I'm going to ask opposing counsel,
16 right, what his -- if he's amenable to that. Let's see what
17 you all want to do so everyone is figuratively and literally on
18 the same page, right.

19 MS. SHANKS: Well, I think Mr. Cereghino and I are
20 both on the same page where I would want to get this written
21 order in as soon as possible. I don't know if that will be by
22 tomorrow because he has to have the time to look over it as
23 well, and I don't know what his schedule is. But with his
24 representations that FTE is not going to go out and do anything
25 squirrely in this gap, I think that he and I are both on the

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 same page, that we would just work together to get the order
2 entered.

3 THE COURT: Okay. So you're asking that the oral
4 pronouncement from the bench be viewed as if it were
5 memorialized in writing pending the actual written order, or
6 are you asking something different?

7 MS. SHANKS: The first, Your Honor, that your oral
8 pronouncement be viewed as memorialized in a written order.

9 THE COURT: Counsel?

10 MR. CEREGHINO: Fine.

11 THE COURT: Okay. Perfect. Thank you.

12 So can I view that agreement -- is that an agreement
13 under EDCR 7.50, stated in open court as if it were
14 memorialized in writing, or do you all need to do a stipulation
15 to that regard? I'm just -- what meets your needs, folks?

16 MR. CEREGHINO: Please. Yes, I stipulate to the open
17 court memorializing.

18 THE COURT: Okay.

19 MS. SHANKS: I stipulate in open court too, Your
20 Honor. Thank you.

21 THE COURT: Okay. So I do appreciate it. Like I
22 said, excellent briefing, excellent oral argument.

23 Counsel, I believe you have a question. Go ahead.

24 MR. CEREGHINO: I do, just a couple sort of
25 housekeeping points.

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 THE COURT: Sure.

2 MR. CEREGHINO: One, and I may have missed it, but
3 when you went through the different factors, I didn't hear a
4 discussion of the reasonable likelihood of success on the
5 merits. If it was there, fine. If not, if I could just have
6 that articulated.

7 THE COURT: Sure. Sure. It was the Court's
8 intention that I did, but to the extent that it may not have
9 been clear, then it may have been implied rather than
10 expressed.

11 MR. CEREGHINO: Okay.

12 THE COURT: -- I'll feel free to restate it. I think
13 there's reasonable likelihood of the merits because what you
14 have here is you have a dec relief action. You have prior
15 orders of this Court that has already found that Innovativ has
16 certain rights and certain aspects to it, and that was what I
17 was going through when I was going through the analysis of the
18 current position with regards to having the stock. So
19 therefore having it lose its stock would be taking away its
20 declaratory relief rights under the complaint. So it does have
21 a likelihood of success on the merits, and the Court has
22 already previously found that in prior orders of the Court.

23 So I have a law of the case issue as well as
24 presented for here, today's purposes for preliminary injunction
25 given the February 3rd amendment, the dec relief action. I

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 have to treat that.

2 And I appreciate that you do distinguish -- the
3 distinction that the prior ruling of the Court on summary
4 judgment really was the second cause of action under 78 rather
5 than the third -- or rather than the first cause of action --

6 MR. CEREGHINO: Yeah, it was one of them.

7 THE COURT: -- was actually the second. Yeah.

8 (Indiscernible) 78 is I also have that as law of the case. So
9 that already -- and I have to look at the complaint as a whole.
10 And since I already have a summary judgment as to one of the
11 causes of action ruling as well as prior rulings with regards
12 to the other cause of action in addition to the indicia of what
13 has been stated, although there are some outstanding issues
14 about whether or not it was or is not by fraud, et cetera, I
15 still at this juncture for purposes of preliminary injunction,
16 that's a likelihood of success on the merits.

17 MR. CEREGHINO: Okay.

18 THE COURT: Does that answer that question? Go
19 ahead, please.

20 MR. CEREGHINO: No. Please. All I wanted was to
21 make sure there was some sort of articulation on the record,
22 which leads to the next point, which is that we will write it.
23 I won't take up the time today to orally request it, but we are
24 probably going to move to stay pending an appeal of the
25 preliminary injunctive relief. So I just wanted to give Your

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 Honor a heads up on that.

2 THE COURT: I do appreciate. Are you asking that
3 that be an oral motion today that the Court take into account?

4 MR. CEREGHINO: No. I will brief it so that there is
5 the appropriate full analysis, bond discussion, whatever is
6 appropriate. It will probably come in short order, but I just
7 wanted to give a heads up and give a heads up to Ms. Shanks too
8 that that's probably coming.

9 THE COURT: Sure. No, I appreciate the heads up.
10 The reason why I was asking you the question, because if you
11 were asking it to be an oral motion without notice, then I'd
12 have to see what opposing counsel's position was, but since
13 you're not, since it's just a notification.

14 MR. CEREGHINO: Yep.

15 THE COURT: Counsel, do you have any housekeeping
16 clarifications or any other type of questions? Counsel for
17 Innovative?

18 MS. SHANKS: No, Your Honor.

19 THE COURT: Pardon?

20 MS. SHANKS: Not at this time, Your Honor. Thank
21 you.

22 THE COURT: Thank you.

23 Counsel for FTE, did I answer all of yours, or is
24 there any more that you have?

25 MR. CEREGHINO: The only issue I have is I would like

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 to order a transcript, but I can do that separately. So.

2 THE COURT: That's a different person than me. Okay.

3 MR. CEREGHINO: Exactly.

4 THE COURT: But in light of you all's oral -- there's
5 two things I just do want to mention is in light of it being
6 memorialized as if it were here in court today, you all need to
7 decide how that's going to be handled procedurally, depending
8 on what further action either party may wish to do; right?

9 MR. CEREGHINO: Uh-huh.

10 THE COURT: So that you're at least on the same page
11 or at least have the issues teed up for the Court for what you
12 want me to address, right, because the order for what you all
13 agreed to and then what you said may or may not have impacts
14 which aren't before me. So I'm not making any decisions
15 because I give no advisory opinions.

16 MR. CEREGHINO: Uh-huh.

17 THE COURT: Okay. The next thing is with regards to
18 your statement that you want to order a transcript, does that
19 mean that you all want additional time in which to have this
20 order be provided to the Court, or you're going to try and get
21 a transcript on -- or maybe you're trying to get just a DVD.

22 MR. CEREGHINO: No. That's --

23 THE COURT: Are you going to get a DVD or something
24 or --

25 MR. CEREGHINO: Yeah. I was probably just going to

A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 ask for a written transcript, and it's just going to be for
2 purposes of --

3 THE COURT: Whatever future actions.

4 MR. CEREGHINO: Whenever I go into an appeal land.
5 That's all. So, yeah.

6 THE COURT: Okay. The reason why I was asking is if
7 you all needed additional time under EDCR 7.21, it's easier to,
8 while I've got you both here than to --

9 MR. CEREGHINO: No. I think Your Honor was very
10 clear. I trust that I will get an order that accurately
11 reflects it, and that's that.

12 THE COURT: Okay. So, Counsel, for Innovativ, I did
13 not hear a request for any additional time under EDCR 7.21. So
14 I'm just going to leave it as please prepare the order.
15 Circulate it to opposing counsel. Provide it back to the Court
16 in accordance with EDCR 7.21 to the DC 31 inbox. And wish you
17 all a great rest of your day, rest of your week and thank you
18 so very much for your time.

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A-22-849188-B | Innovativ v. FTE | PI | 2023-04-12

1 MR. CEREGHINO: Thank you.

2 MS. SHANKS: Thank you, Your Honor.

3 THE COURT: Have a great one. And that concludes our
4 morning.

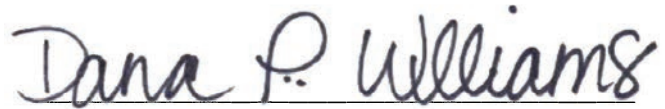
5 (Proceedings concluded at 11:48 a.m.)

6 -oOo-

7 ATTEST: I do hereby certify that I have truly and correctly
8 transcribed the audio/video proceedings in the above-entitled
9 case to the best of my ability.

10

11

A handwritten signature in black ink that reads "Dana L. Williams". The signature is written in a cursive, flowing style. The first name "Dana" is written in a larger, more prominent script, followed by "L." and "Williams". The signature is positioned above the printed name and title.

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Dana L. Williams
Transcriber

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<p>MR. CEREGHINO: [65] 2/16 16/13 17/22 18/11 18/14 18/24 19/1 19/22 21/1 21/23 23/19 23/22 23/25 24/2 24/5 24/15 25/24 26/3 26/7 26/17 26/22 29/12 32/23 32/25 37/15 37/19 38/9 38/11 38/13 39/5 39/11 40/18 40/23 41/3 41/7 41/15 41/17 41/20 41/24 42/3 42/12 46/3 46/7 71/18 71/21 72/2 73/10 73/16 73/24 74/2 74/11 75/6 75/17 75/20 76/4 76/14 76/25 77/3 77/9 77/16 77/22 77/25 78/4 78/9 79/1</p> <p>MS. SHANKS: [27] 2/12 3/19 9/13 9/15 18/4 20/15 21/14 21/19 46/18 49/17 50/1 52/15 54/3 54/25 55/18 56/5 56/19 57/25 58/9 72/9 72/12 72/19 73/7 73/19 76/18 76/20 79/2</p> <p>THE COURT RECORDER: [5] 2/5 2/7 21/7 21/18 29/10</p> <p>THE COURT: [93]</p>	<p>1983 [1] 60/3 1987 [1] 66/5 1998 [1] 60/11</p> <p>2</p> <p>2.21 [1] 39/1 2.5 [1] 45/22 2.5 million [1] 45/22 20 [7] 7/15 25/1 33/6 36/7 36/7 44/1 51/15 2000s [1] 7/9 2004 [1] 59/17 2006 [1] 62/15 2009 [1] 61/25 2011 [1] 59/23 2019 [3] 50/21 51/9 60/22 2020 [5] 7/14 8/25 44/2 44/2 44/3 2021 [3] 13/10 16/7 40/15 2022 [5] 14/14 14/15 19/2 30/23 61/5 2023 [7] 1/12 2/1 18/17 23/7 52/13 53/3 67/24 21 [4] 28/6 33/18 36/19 36/19 22 [2] 28/2 34/1 22.1 [1] 46/9 22.1 million [1] 45/25 2200 [1] 18/3 227 [2] 2/25 58/12 228 [1] 58/13 232 [1] 58/13 234 [2] 3/1 58/13 236 [2] 3/1 58/14 24 [1] 28/2 25 percent [1] 46/24 25,000 [1] 66/17 26 [2] 38/24 39/24 27.3 [1] 46/10 28 [1] 19/3 28.8 [1] 45/24 29 [2] 19/3 19/9</p> <p>3</p> <p>3 are [1] 69/9 3 seems [1] 54/11 30,000 [3] 66/20 66/23 67/6 30th [1] 24/7 31 [1] 78/16 31st [2] 44/2 44/2 32 [1] 61/5 350 [1] 47/12 388 [1] 47/13 398 [1] 40/15 3rd [8] 17/14 18/13 24/16 24/18 24/20 46/13 61/5 74/25</p> <p>4</p> <p>4103 [1] 66/4 414 [1] 66/5 456 [1] 59/16 487 [1] 40/15</p> <p>5</p> <p>5,000 [3] 66/16 66/22</p>	<p>67/2 5.03 [1] 47/14 5.2 million [1] 46/10 500,000 [1] 30/19 55 [1] 47/12 55.2 [1] 45/22 55.2 million [2] 45/14 45/17 559 [1] 59/23 56 [2] 39/1 39/18 562 [1] 61/24 57.7 [2] 45/23 45/24</p> <p>6</p> <p>6 parenthetical [1] 33/23 6.1 [1] 33/22 6.5 [1] 33/22 600-page [1] 48/7 680 [1] 60/21 699 [1] 61/24 6C [3] 33/18 33/21 53/21</p> <p>7</p> <p>7.21 [3] 78/7 78/13 78/16 7.50 [1] 73/13 749 [1] 60/11 78 [5] 59/11 61/17 65/11 75/4 75/8 78.211 [4] 7/4 7/6 8/7 15/15 78.240 [1] 8/7</p> <p>8</p> <p>8-K [1] 9/7 834 [1] 60/3 84 [1] 47/13 840 [1] 47/13 849188 [1] 2/9 877 [1] 62/14 889 [1] 60/21 8th [2] 18/17 45/7</p> <p>9</p> <p>99 [1] 60/3 9:56 [1] 2/1</p> <p>A</p> <p>a.m [2] 2/1 79/5 ability [4] 4/7 11/4 64/25 79/9 able [6] 19/25 36/8 48/15 61/19 64/3 65/2 about [29] 10/16 10/21 11/12 13/19 16/3 18/13 19/3 22/2 23/3 24/15 24/17 25/14 26/16 29/19 30/5 30/8 31/5 32/10 32/23 35/22 40/8 40/10 40/10 42/6 42/14 48/25 66/5 70/4 75/14 above [1] 79/8 above-entitled [1] 79/8 absent [1] 31/22 absolutely [5] 9/5 19/23 27/16 28/8 55/10 absurd [1] 35/18</p>	<p>abuse [1] 34/23 accommodate [1] 64/20 accordance [1] 78/16 according [2] 19/15 26/2 account [12] 41/6 41/11 58/21 58/21 58/22 66/2 67/9 67/10 67/17 69/21 70/13 76/3 accurate [1] 11/13 accurately [1] 78/10 ACH [1] 42/19 achieve [3] 34/11 34/22 34/23 achieved [2] 28/10 32/4 across [2] 10/3 54/21 act [17] 5/15 9/19 11/25 12/5 12/16 25/16 47/4 47/4 47/5 47/6 52/18 52/23 54/3 54/8 55/4 56/7 69/17 acting [6] 3/24 6/11 10/4 25/4 27/19 54/13 action [26] 3/23 5/19 10/23 10/24 11/9 14/5 14/8 29/6 34/13 54/17 56/1 56/9 56/12 57/12 57/22 67/22 68/15 68/25 69/1 74/14 74/25 75/4 75/5 75/11 75/12 77/8 actions [18] 6/22 14/7 15/10 16/5 52/9 52/16 53/18 53/20 53/23 54/13 55/2 59/10 68/5 69/8 69/9 70/12 71/23 78/3 active [1] 4/12 actual [4] 56/16 60/14 67/14 73/5 actually [13] 5/23 25/1 25/22 26/21 30/20 35/4 36/13 41/12 44/1 45/16 45/22 45/24 75/7 added [1] 17/19 addition [1] 75/12 additional [5] 45/21 66/18 77/19 78/7 78/13 address [10] 2/21 13/3 20/18 49/13 49/18 49/18 62/25 63/1 66/14 77/12 addressed [3] 3/3 50/6 69/7 addresses [2] 61/23 68/22 addressing [1] 7/19 adduced [1] 44/1 admissibility [1] 42/14 admissible [1] 39/22 admission [1] 46/22 admissions [1] 13/7 admit [1] 17/4 admits [1] 12/1 admitted [1] 43/5 adopted [1] 64/21 advance [1] 40/24</p>	<p>advantage [1] 64/12 adverse [5] 8/14 8/18 8/19 8/23 50/25 adversely [1] 22/14 advisory [1] 77/15 affected [1] 16/5 affects [2] 14/25 15/1 affidavit [2] 39/12 39/20 affidavits [1] 39/16 affiliate [1] 10/6 affiliated [3] 10/2 67/21 69/13 after [9] 9/11 13/13 23/13 24/21 30/3 35/11 44/5 56/13 69/2 afternoon [1] 71/2 again [30] 6/10 7/25 8/12 11/8 14/1 22/12 26/24 29/7 29/21 29/22 30/10 31/10 31/14 31/19 32/9 34/15 34/18 34/25 35/6 38/19 39/24 40/9 43/19 44/12 45/6 50/11 51/15 52/4 55/16 68/11 against [4] 13/13 35/8 44/25 45/2 agency [1] 47/13 agent [1] 47/10 agents [3] 67/21 69/13 69/18 ago [3] 28/9 46/5 66/3 agree [2] 50/7 60/23 agreed [2] 45/17 77/13 agreement [15] 13/17 15/18 33/12 35/23 35/24 49/8 51/7 51/14 51/20 51/22 71/5 71/15 72/6 73/12 73/12 agreements [2] 51/8 51/10 agrees [1] 45/11 ahead [10] 9/14 16/11 18/10 21/3 39/9 54/24 71/20 72/11 73/23 75/19 air [2] 21/16 21/17 albeit [1] 23/24 all [55] 4/9 4/16 4/22 5/11 10/1 11/13 11/23 12/24 13/10 13/15 14/5 15/15 16/10 20/11 26/12 28/17 30/15 32/16 33/6 33/14 34/5 34/22 35/8 37/22 38/16 38/17 40/7 44/12 45/12 50/23 51/3 51/7 52/2 56/11 57/5 60/12 62/6 63/14 63/24 64/14 64/20 64/24 65/25 66/10 68/11 72/17 73/14 75/20 76/23 77/6 77/12 77/19 78/5 78/7 78/17 all's [2] 17/25 77/4 all-encompassing [1] 30/15 allegations [3] 7/1</p>
--	--	--	--	---

<p>A</p> <p>allegations... [2] 14/20 52/10</p> <p>allege [1] 34/12</p> <p>alleging [1] 48/9</p> <p>allowed [2] 30/4 42/15</p> <p>allowing [1] 4/1</p> <p>almost [1] 46/3</p> <p>alone [1] 17/12</p> <p>already [25] 9/6 9/7 11/16 14/7 14/21 15/16 17/10 19/17 24/11 30/11 33/8 45/3 52/2 63/1 65/17 66/15 66/16 68/12 68/22 69/6 69/21 74/15 74/22 75/9 75/10</p> <p>also [30] 4/16 7/11 9/3 11/10 11/19 15/7 15/12 15/17 17/11 22/1 29/18 29/18 32/8 35/22 40/12 44/5 51/5 59/24 60/2 61/7 63/5 63/18 63/18 63/25 64/3 64/8 65/19 65/24 70/15 75/8</p> <p>alternative [1] 7/23</p> <p>although [1] 75/13</p> <p>am [6] 40/2 42/13 45/12 46/19 71/1 72/2</p> <p>amenable [1] 72/16</p> <p>amend [7] 24/21 31/5 33/20 34/4 50/13 50/14 58/17</p> <p>amended [20] 3/24 4/14 9/5 10/8 10/11 10/13 10/22 11/3 12/17 15/18 25/5 25/10 25/11 32/5 46/23 54/8 56/19 67/23 67/24 69/3</p> <p>amendment [37] 4/19 9/16 9/18 9/22 9/25 10/5 10/9 10/10 10/12 12/24 13/11 14/13 14/24 15/1 15/3 17/14 19/14 19/24 20/6 23/8 24/16 30/23 31/9 31/13 31/25 32/2 32/3 32/5 32/11 34/2 46/13 52/23 56/13 57/2 57/18 60/24 74/25</p> <p>amount [3] 66/24 66/25 67/7</p> <p>analogy [2] 61/22 61/22</p> <p>analysis [8] 19/17 30/3 48/23 60/12 61/16 62/22 74/17 76/5</p> <p>announced [2] 14/7 52/24</p> <p>announcements [1] 49/9</p> <p>another [8] 10/22 11/6 11/8 23/1 26/11 30/8 56/10 63/22</p> <p>answer [5] 5/5 5/14 29/21 75/18 76/23</p> <p>answers [1] 51/3</p> <p>any [50] 3/23 3/25 6/15 8/14 12/8 12/21 13/12</p>	<p>27/3 28/3 28/18 29/6 32/13 32/14 32/14 34/8 34/10 35/1 36/4 38/22 42/9 42/13 44/19 50/23 54/5 55/2 56/8 56/12 57/11 61/18 64/1 64/12 64/19 64/19 64/23 66/19 66/19 67/20 67/22 68/13 68/15 69/1 69/23 69/25 70/14 71/23 76/15 76/16 76/24 77/14 78/13</p> <p>anybody [4] 31/5 32/11 35/17 43/4</p> <p>anyone [2] 31/20 43/12</p> <p>anything [19] 12/17 12/19 21/19 24/17 25/15 32/10 34/7 49/7 54/5 55/14 64/2 65/3 65/5 65/5 65/6 66/1 68/11 69/5 72/24</p> <p>anyway [1] 3/11</p> <p>apologize [2] 32/23 46/20</p> <p>apparent [1] 10/24</p> <p>Apparently [1] 50/17</p> <p>appeal [2] 75/24 78/4</p> <p>appear [1] 9/23</p> <p>appearance [1] 2/11</p> <p>APPEARANCES [1] 1/16</p> <p>appears [1] 4/16</p> <p>appellate [2] 40/15 42/4</p> <p>appendix [6] 7/15 36/7 36/20 38/25 48/7 58/12</p> <p>application [4] 17/9 31/10 39/14 65/22</p> <p>Applications [1] 39/16</p> <p>applied [2] 17/15 65/21</p> <p>applies [1] 69/20</p> <p>apply [5] 18/14 22/18 28/25 59/15 61/23</p> <p>appointment [2] 11/1 67/25</p> <p>appreciate [8] 2/19 41/16 49/24 56/15 73/21 75/2 76/2 76/9</p> <p>appreciative [1] 71/1</p> <p>appropriate [11] 62/17 66/23 66/25 68/2 68/2 68/17 68/24 69/20 70/22 76/5 76/6</p> <p>approval [2] 10/6 31/22</p> <p>approve [1] 10/21</p> <p>approved [3] 4/17 46/24 49/10</p> <p>approving [1] 49/4</p> <p>APRIL [4] 1/12 2/1 13/10 16/7</p> <p>April 2021 [2] 13/10 16/7</p> <p>are [109]</p> <p>aren't [5] 5/18 29/16 37/17 52/16 77/14</p> <p>arguably [3] 10/16 52/25 68/8</p> <p>argue [3] 6/3 12/2 12/2</p>	<p>argued [3] 4/8 11/5 68/8</p> <p>argues [2] 5/22 11/21</p> <p>arguing [1] 47/3</p> <p>argument [39] 6/10 7/17 7/20 8/10 14/18 15/11 16/20 20/17 20/18 20/19 20/25 31/6 35/15 38/8 38/15 38/18 40/22 41/11 41/22 42/11 47/2 47/3 47/7 47/19 47/24 48/5 48/11 48/14 50/2 50/12 50/16 51/5 51/11 51/23 54/23 54/24 62/7 67/10 73/22</p> <p>arguments [4] 14/2 48/4 49/21 50/4</p> <p>arises [1] 28/23</p> <p>arising [1] 62/20</p> <p>arithmetic [1] 46/8</p> <p>around [5] 5/22 27/2 46/20 57/16 69/16</p> <p>Arthur [1] 61/24</p> <p>articulated [1] 74/6</p> <p>articulation [1] 75/21</p> <p>as [87]</p> <p>aside [1] 42/6</p> <p>ask [10] 3/13 3/13 3/15 11/11 23/18 25/15 54/21 71/8 72/15 78/1</p> <p>asked [14] 3/22 9/19 11/10 23/17 29/5 41/9 41/14 42/8 46/5 53/17 58/6 58/7 64/10 64/12</p> <p>asking [51] 4/22 5/1 5/3 5/8 5/9 5/10 6/11 6/11 8/1 11/23 14/25 16/8 16/9 16/10 20/11 22/18 25/2 25/9 27/11 27/17 30/9 31/21 34/10 35/7 35/9 35/10 41/5 41/13 42/8 48/20 52/4 52/14 52/17 53/16 53/18 53/22 54/2 54/3 54/5 54/8 54/16 55/3 55/14 56/2 57/11 73/3 73/6 76/2 76/10 76/11 78/6</p> <p>asks [3] 25/3 25/6 27/19</p> <p>aspect [3] 17/12 64/4 70/3</p> <p>aspects [3] 65/22 68/22 74/16</p> <p>assert [5] 16/23 28/11 45/25 52/9 53/19</p> <p>asserted [3] 23/23 24/22 28/22</p> <p>asserting [4] 20/23 20/24 28/24 30/21</p> <p>assertion [1] 7/8</p> <p>assertions [1] 52/11</p> <p>assign [2] 26/19 69/15</p> <p>assigns [2] 67/22 69/14</p> <p>Association [1] 47/11</p> <p>assumes [1] 34/15</p> <p>assuming [3] 24/8 30/18 31/3</p>	<p>at [80]</p> <p>attack [1] 16/18</p> <p>attempted [1] 33/20</p> <p>attempting [3] 4/5 27/23 31/8</p> <p>attempts [1] 34/2</p> <p>ATTEST [1] 79/7</p> <p>audio [1] 79/8</p> <p>audio/video [1] 79/8</p> <p>authenticated [1] 36/21</p> <p>authority [4] 3/6 6/23 7/23 42/9</p> <p>available [4] 7/17 7/22 48/12 48/13</p> <p>avoid [2] 28/16 35/6</p> <p>aware [1] 40/9</p> <p>awareness [1] 43/20</p> <p>away [7] 6/5 6/6 8/6 14/19 45/13 66/16 74/19</p> <p>B</p> <p>back [14] 21/1 21/22 24/7 29/7 29/19 34/3 34/25 36/9 45/6 52/19 66/9 67/16 68/10 78/15</p> <p>background [1] 21/12</p> <p>bad [1] 37/10</p> <p>balance [9] 16/1 37/13 44/23 64/7 64/8 64/22 65/8 65/8 65/23</p> <p>balancing [3] 37/21 38/2 44/22</p> <p>ball [1] 35/5</p> <p>based [9] 7/1 14/19 26/5 45/16 47/22 48/10 48/11 58/22 61/2</p> <p>bases [1] 70/17</p> <p>basing [1] 26/10</p> <p>basis [6] 21/25 31/23 34/6 40/14 44/12 51/23</p> <p>Bates [1] 47/12</p> <p>be [95]</p> <p>bearing [1] 33/24</p> <p>beat [1] 52/1</p> <p>Beautiful [1] 2/8</p> <p>became [1] 64/22</p> <p>because [88]</p> <p>become [1] 70/16</p> <p>been [50] 4/18 4/21 8/23 9/25 10/18 12/20 14/12 16/6 26/23 28/10 30/1 30/24 32/7 32/13 32/14 32/14 34/13 35/11 35/12 36/21 37/4 37/5 42/15 48/15 48/19 48/22 50/6 51/20 53/6 53/9 55/23 56/21 57/1 57/10 58/25 59/3 61/3 62/9 63/16 63/21 64/15 64/24 65/25 66/16 67/8 69/5 69/5 74/9 74/9 75/13</p> <p>before [48] 1/11 4/20 9/11 9/13 15/12 15/23 17/6 17/18 18/23 18/25 20/1 20/20 22/13 22/14 23/9 23/15 23/16 24/1</p>	<p>24/24 25/21 26/5 26/8 37/17 38/10 44/3 49/8 49/20 49/24 50/3 50/8 50/9 55/5 55/7 58/6 58/11 58/11 58/15 58/16 58/18 58/23 61/1 62/18 63/2 63/18 64/20 68/18 70/2 77/14</p> <p>beginning [2] 23/18 48/20</p> <p>behalf [4] 2/13 2/15 2/17 39/13</p> <p>being [21] 6/14 13/6 15/9 27/9 27/14 34/11 34/12 44/20 50/25 54/15 54/22 55/5 55/16 64/11 65/2 65/6 65/18 66/10 68/3 70/20 77/5</p> <p>believe [10] 4/3 4/11 14/9 15/15 36/7 36/18 47/22 48/18 55/10 73/23</p> <p>belong [2] 29/14 29/15</p> <p>bench [1] 73/4</p> <p>beneficial [1] 19/10</p> <p>benefit [1] 43/22</p> <p>Bernatek [1] 7/18</p> <p>beside [2] 11/22 50/21</p> <p>best [4] 43/7 43/8 48/15 79/9</p> <p>between [10] 34/19 36/18 42/24 44/23 51/20 51/21 60/7 60/15 61/11 61/11</p> <p>Beys [4] 11/3 25/11 32/25 47/5</p> <p>Beys's [1] 32/20</p> <p>BFP [4] 38/20 43/9 44/10 44/15</p> <p>binding [1] 22/3</p> <p>bit [2] 2/24 3/3</p> <p>blue [1] 20/4</p> <p>BlueJeans [1] 1/17</p> <p>board [8] 18/20 18/21 31/8 32/16 33/1 34/4 49/6 49/10</p> <p>bona [4] 28/22 28/23 38/18 43/22</p> <p>bond [5] 66/18 66/25 67/6 70/19 76/5</p> <p>bonds [1] 66/16</p> <p>books [1] 43/3</p> <p>both [12] 3/3 3/11 6/2 7/6 41/9 65/23 65/23 68/8 69/17 72/20 72/25 78/8</p> <p>bothered [1] 27/18</p> <p>bought [1] 5/25</p> <p>bound [2] 24/23 59/17</p> <p>breach [3] 49/13 51/20 51/21</p> <p>breached [1] 24/16</p> <p>brief [4] 16/3 20/16 46/17 76/4</p> <p>briefed [6] 6/14 15/9 20/20 48/21 48/22 55/5</p> <p>briefing [4] 32/20 59/15 62/7 73/22</p> <p>briefs [1] 20/20</p>
--	--	--	--	---

<p>B</p> <p>bring [3] 6/7 40/21 42/10</p> <p>bringing [2] 23/9 23/10</p> <p>brings [1] 13/23</p> <p>brought [2] 41/10 70/2</p> <p>Building [1] 47/11</p> <p>bunch [2] 13/12 56/25</p> <p>burden [3] 14/23 16/14 16/20</p> <p>business [2] 13/20 36/5</p> <p>but [106]</p> <p>button [1] 30/2</p> <p>Buzz [1] 62/21</p> <p>bylaw [2] 24/16 33/20</p> <p>bylaw's [1] 9/16</p> <p>bylaws [69] 3/25 4/14 4/19 5/16 5/18 9/5 9/6 9/8 9/8 9/15 9/20 10/4 10/8 10/9 10/10 10/11 10/12 10/13 10/19 10/22 11/3 12/17 12/18 12/19 12/22 12/23 13/11 14/13 14/24 15/1 15/3 15/4 15/18 17/14 19/14 20/6 23/7 25/5 25/10 25/11 30/22 31/5 31/9 31/13 31/25 32/2 32/3 32/5 32/10 33/3 33/20 34/1 34/4 46/13 46/23 50/13 50/14 52/1 52/23 53/14 54/8 56/13 56/19 56/20 57/2 57/18 60/24 67/23 69/2</p> <hr/> <p>C</p> <p>calculation [1] 19/15</p> <p>call [2] 2/3 68/4</p> <p>called [1] 27/15</p> <p>calls [1] 10/10</p> <p>campaign [1] 31/15</p> <p>can [59] 4/23 5/3 5/7 5/12 5/15 6/17 6/19 6/21 11/7 12/6 13/15 17/5 19/6 19/11 20/21 21/5 23/8 24/21 25/15 27/4 28/8 28/10 28/11 29/24 30/17 32/4 33/23 35/3 36/5 39/8 40/16 41/5 41/11 41/19 41/21 42/10 42/12 42/12 45/5 46/13 47/4 47/6 47/25 48/3 53/11 53/14 54/1 55/12 56/18 58/20 58/21 59/9 64/16 67/14 67/17 69/18 71/6 73/12 77/1</p> <p>can't [29] 17/6 21/9 22/13 23/14 25/9 25/9 25/14 25/16 26/18 26/19 26/21 27/14 27/17 28/11 28/14 28/17 29/10 29/16 34/8 34/10 34/24 39/8 40/21 42/21 44/13 49/23 51/13 61/18 62/23</p> <p>cancel [8] 5/13 6/19</p>	<p>7/5 7/22 28/7 48/9 55/12 61/21</p> <p>canceled [16] 5/21 5/24 12/1 12/4 12/5 14/12 27/23 28/3 28/8 43/2 54/17 55/20 55/22 55/23 56/6 56/9</p> <p>canceling [4] 22/21 27/4 27/6 63/7</p> <p>cancellation [26] 3/24 4/11 5/23 6/1 6/1 6/12 12/1 12/6 14/15 15/13 22/16 22/17 27/20 27/21 45/17 48/11 52/18 52/25 53/1 54/4 54/15 55/1 55/4 56/8 56/9 62/1</p> <p>cannot [19] 5/23 6/2 6/2 7/1 7/6 7/12 7/22 8/6 10/7 12/19 14/18 17/7 22/10 34/4 35/3 35/5 41/6 41/12 65/19</p> <p>care [3] 36/4 66/20 71/25</p> <p>carts [1] 17/6</p> <p>case [48] 1/5 2/9 4/1 4/6 4/8 4/24 6/8 7/5 7/9 7/18 7/18 7/18 10/14 12/12 17/3 17/13 22/3 22/22 28/11 30/5 30/22 33/5 40/14 41/19 41/22 42/9 47/11 48/25 53/11 58/22 59/5 59/6 59/18 60/21 61/2 61/10 61/13 61/20 61/22 63/5 63/16 63/17 64/16 68/9 69/12 74/23 75/8 79/9</p> <p>cause [5] 11/4 70/6 75/4 75/5 75/12</p> <p>causes [1] 75/11</p> <p>caveat [2] 13/3 13/16</p> <p>CEREGHINO [6] 1/21 2/17 29/10 56/21 57/3 72/19</p> <p>Cereghino's [3] 46/22 47/3 57/7</p> <p>certain [14] 26/25 26/25 27/1 33/13 36/9 46/19 52/16 53/2 53/20 59/10 60/20 68/22 74/16 74/16</p> <p>certainly [6] 21/2 31/18 34/11 43/5 43/6 56/5</p> <p>certify [1] 79/7</p> <p>cetera [3] 19/12 69/18 75/14</p> <p>challenge [10] 5/23 8/4 15/10 15/13 20/8 20/9 23/7 48/3 48/10 69/4</p> <p>challenged [2] 21/2 59/4</p> <p>challenges [1] 15/17</p> <p>challenging [1] 48/1</p> <p>chance [5] 9/17 20/17 40/20 44/19 44/20</p> <p>change [6] 17/5 22/1 23/2 65/16 65/16 68/8</p> <p>changed [2] 31/14 52/10</p>	<p>check [41] 41/20 42/19 43/2 47/18</p> <p>China [3] 48/24 49/2 49/3</p> <p>choice [1] 29/3</p> <p>choices [2] 29/3 71/4</p> <p>chose [1] 23/11</p> <p>chosen [4] 28/14 28/15 28/15 28/15</p> <p>circle [1] 21/22</p> <p>circles [1] 57/16</p> <p>Circuit [4] 60/19 60/21 61/23 61/25</p> <p>circular [2] 50/12 50/16</p> <p>Circulate [1] 78/15</p> <p>circumstances [1] 55/13</p> <p>circumvent [1] 33/11</p> <p>citation [2] 60/2 60/19</p> <p>citations [1] 59/15</p> <p>cite [3] 42/14 63/16 66/4</p> <p>cited [3] 61/21 63/17 66/4</p> <p>civil [1] 50/21</p> <p>claim [19] 14/10 15/2 15/12 19/20 20/5 24/7 24/12 24/13 24/18 24/19 24/22 26/7 32/9 34/9 35/1 35/21 52/3 52/8 60/1</p> <p>claim's [1] 22/13</p> <p>claimed [1] 30/12</p> <p>claiming [2] 14/22 44/6</p> <p>claims [17] 8/15 8/18 8/19 8/23 16/24 23/15 23/24 24/1 24/3 24/23 43/19 43/20 44/20 50/25 51/2 53/13 62/18</p> <p>clarification [1] 55/25</p> <p>clarifications [1] 76/16</p> <p>clarify [1] 54/2</p> <p>CLARK [4] 1/2 2/1 60/10 71/7</p> <p>clear [13] 4/5 8/16 12/10 20/19 27/16 51/16 55/17 56/2 58/20 63/4 70/14 74/9 78/10</p> <p>clearly [4] 6/7 8/4 16/3 69/12</p> <p>client [1] 26/9</p> <p>clients [1] 17/25</p> <p>close [1] 20/10</p> <p>co [2] 35/4 42/24</p> <p>co-litigant [1] 35/4</p> <p>co-litigants [1] 42/24</p> <p>cognizant [2] 19/9 70/24</p> <p>Coleman [7] 18/4 25/15 25/16 42/17 43/19 47/7 47/8</p> <p>Coleman's [1] 38/25</p> <p>come [10] 13/18 17/21 27/18 28/8 28/11 28/15 29/2 29/23 45/25 76/6</p> <p>comes [1] 38/20</p> <p>coming [3] 11/21 58/17 76/8</p>	<p>commenced [1] 68/21</p> <p>comments [1] 8/16</p> <p>common [3] 45/14 46/9 46/10</p> <p>communications [1] 40/7</p> <p>companies [1] 47/4</p> <p>company [6] 34/20 38/2 44/25 47/6 47/10 50/22</p> <p>comparison [1] 9/10</p> <p>compensation [2] 8/21 51/2</p> <p>competent [1] 22/10</p> <p>complain [1] 28/8</p> <p>complaining [2] 31/1 34/7</p> <p>complaint [14] 9/4 15/8 26/21 32/5 52/8 52/19 60/5 60/5 62/19 62/20 62/24 62/24 74/20 75/9</p> <p>complete [1] 21/6</p> <p>completely [1] 26/22</p> <p>compliance [3] 16/4 65/11 65/14</p> <p>component [2] 25/22 59/18</p> <p>composition [1] 26/25</p> <p>concede [2] 23/8 44/15</p> <p>concedes [1] 55/20</p> <p>conceding [1] 55/9</p> <p>concept [7] 22/3 22/18 23/3 59/6 59/12 59/13 60/13</p> <p>concepts [1] 59/2</p> <p>concern [1] 4/13</p> <p>concerned [1] 58/1</p> <p>concerning [1] 38/6</p> <p>concert [1] 10/4</p> <p>concluded [1] 79/5</p> <p>concludes [1] 79/3</p> <p>conclusion [1] 35/19</p> <p>conclusive [1] 60/17</p> <p>concrete [1] 62/13</p> <p>condition [1] 36/15</p> <p>conditional [2] 30/16 36/14</p> <p>conditioned [1] 38/19</p> <p>conduct [4] 4/3 5/12 14/25 37/6</p> <p>confident [1] 40/1</p> <p>conform [1] 39/18</p> <p>confront [1] 11/15</p> <p>confusing [2] 8/17 11/19</p> <p>Congress [1] 26/25</p> <p>consent [5] 4/21 10/17 10/19 13/14 56/22</p> <p>consequences [2] 29/4 71/14</p> <p>consequential [1] 43/10</p> <p>considered [2] 50/10 67/7</p> <p>consistent [1] 70/7</p> <p>constant [1] 21/9</p> <p>constituents [1] 34/21</p> <p>constitute [1] 9/22</p>	<p>Constitution [1] 59/19</p> <p>contain [1] 39/17</p> <p>contending [1] 54/14</p> <p>contents [1] 63/25</p> <p>contention [2] 31/23 62/23</p> <p>contentions [2] 15/11 52/11</p> <p>contested [1] 62/10</p> <p>context [1] 22/2</p> <p>continue [4] 23/13 30/4 30/5 55/4</p> <p>continued [1] 70/20</p> <p>contractual [1] 33/14</p> <p>contradicted [1] 51/6</p> <p>contradiction [1] 49/7</p> <p>contradictory [2] 48/6 49/9</p> <p>contradicts [1] 15/3</p> <p>contrary [6] 7/8 8/7 11/5 15/10 30/6 47/9</p> <p>control [2] 34/19 34/22</p> <p>controversial [2] 23/3 31/17</p> <p>controversy [5] 6/8 59/18 60/6 60/9 62/4</p> <p>converse [1] 35/15</p> <p>conversion [2] 4/12 8/5</p> <p>CORCORAN [1] 1/23</p> <p>Corp [1] 61/24</p> <p>corporate [5] 14/4 25/14 64/2 64/25 65/22</p> <p>corporation [6] 5/13 7/4 7/6 47/12 55/11 57/5</p> <p>corporations [2] 6/25 25/14</p> <p>correct [1] 65/21</p> <p>correctly [3] 17/6 34/24 79/7</p> <p>Cottonwood [1] 47/12</p> <p>could [18] 2/21 8/23 12/9 12/12 19/22 19/25 23/9 23/10 36/20 43/1 48/22 56/20 63/14 64/20 65/6 67/1 68/7 74/5</p> <p>couldn't [2] 62/1 69/15</p> <p>counsel [39] 2/11 3/17 9/9 9/9 16/11 18/10 20/21 21/21 23/17 25/19 32/21 35/5 38/5 38/5 39/10 40/19 41/1 41/9 41/14 41/23 46/2 46/4 46/17 49/15 49/15 49/22 53/20 56/15 58/7 71/17 72/7 72/15 73/9 73/23 76/15 76/16 76/23 78/12 78/15</p> <p>counsel's [1] 76/12</p> <p>count [1] 22/6</p> <p>counted [1] 19/7</p> <p>country [4] 10/3 27/4 34/19 34/20</p> <p>COUNTY [5] 1/2 2/1 60/10 60/18 71/7</p> <p>couple [6] 21/25 52/6 58/19 66/14 71/4 73/24</p>
--	--	--	---	---

<p>C</p> <p>course [9] 6/18 13/21 13/21 28/4 29/22 36/20 44/8 44/8 62/6</p> <p>court [201]</p> <p>Court's [12] 3/2 9/11 9/11 12/10 13/13 23/11 40/21 45/7 52/6 58/3 69/9 74/7</p> <p>courtroom [2] 18/1 18/7</p> <p>courts [4] 12/3 59/17 60/20 60/20</p> <p>Cove [1] 47/12</p> <p>cover [1] 3/11</p> <p>covered [1] 3/13</p> <p>credit [2] 35/16 45/12</p> <p>criminally [1] 50/20</p> <p>cross [2] 33/23 56/22</p> <p>cross-reference [1] 56/22</p> <p>Cunningham [7] 10/16 10/20 11/2 11/4 32/18 33/2 53/8</p> <p>current [6] 9/4 12/19 52/3 55/7 68/9 74/18</p> <p>currently [3] 4/19 20/6 26/5</p> <p>curtail [1] 26/13</p> <p>cycle [1] 31/16</p>	<p>declares [1] 26/18</p> <p>deemed [2] 30/1 65/7</p> <p>default [1] 44/15</p> <p>defeat [1] 15/14</p> <p>defeated [1] 38/17</p> <p>defect [1] 42/17</p> <p>defects [1] 39/7</p> <p>defendant [2] 1/9 60/7</p> <p>defendant's [1] 58/13</p> <p>defendants [3] 1/21 60/7 60/8</p> <p>defense [1] 28/22</p> <p>deficient [1] 13/6</p> <p>definitely [3] 14/14 16/4 62/8</p> <p>definition [1] 27/24</p> <p>Delaware [4] 6/23 14/16 49/3 63/16</p> <p>delaying [2] 4/7 4/8</p> <p>delete [1] 33/3</p> <p>deletes [1] 33/18</p> <p>delisted [1] 13/5</p> <p>demand [3] 24/11 30/12 30/17</p> <p>Democrats [2] 27/1 31/16</p> <p>demonstrate [3] 7/16 43/16 44/11</p> <p>demonstrated [4] 7/3 13/25 14/24 19/5</p> <p>demonstrating [1] 6/23</p> <p>depending [1] 77/7</p> <p>deprivation [2] 14/3 14/18</p> <p>deprive [6] 6/2 7/1 17/7 50/12 50/14 50/15</p> <p>DEPT [1] 1/6</p> <p>deregistered [1] 13/7</p> <p>described [1] 46/10</p> <p>describes [1] 46/9</p> <p>deserve [5] 29/20 30/13 33/24 38/1 45/14</p> <p>despite [1] 65/17</p> <p>determination [7] 3/9 11/12 35/6 35/7 35/10 60/10 60/18</p> <p>determine [10] 5/8 6/19 10/7 10/8 12/6 41/5 51/17 53/11 59/9 71/16</p> <p>determined [5] 28/2 53/7 56/14 65/12 69/4</p> <p>deviated [1] 49/2</p> <p>did [47] 5/5 6/24 8/19 8/22 8/25 10/16 12/17 13/10 15/21 19/17 20/17 21/11 22/21 25/17 25/18 26/1 26/2 28/6 30/22 31/2 31/2 31/20 35/2 35/13 39/2 44/7 44/12 48/25 49/6 49/13 49/13 50/23 50/23 51/1 51/3 51/17 51/17 53/23 57/15 58/5 58/7 59/25 61/23 66/4 74/8 76/23 78/12</p> <p>didn't [24] 6/15 10/21 10/21 12/18 16/15</p>	<p>16/15 16/18 18/7 22/5 31/5 31/7 34/5 34/5 35/20 39/3 39/5 39/5 43/19 43/21 43/21 47/19 48/14 51/11 74/3</p> <p>differences [1] 3/7</p> <p>different [23] 18/2 24/22 26/23 27/8 27/22 31/1 31/24 35/20 36/4 43/20 45/16 48/2 48/2 50/22 50/22 53/24 54/20 59/1 62/9 71/10 73/6 74/3 77/2</p> <p>dilute [2] 70/1 70/10</p> <p>dilutive [2] 13/2 13/2</p> <p>dime [1] 35/17</p> <p>direct [1] 60/16</p> <p>directly [9] 4/3 8/7 11/4 11/14 14/25 15/10 15/11 47/8 57/19</p> <p>director [15] 4/15 4/21 5/18 5/19 10/17 10/17 10/23 11/6 11/6 11/8 11/8 13/14 14/5 49/4 69/6</p> <p>directors [7] 4/15 9/17 12/20 12/21 18/20 18/21 67/25</p> <p>disagree [3] 6/6 41/17 60/12</p> <p>disagreed [1] 42/1</p> <p>disagreeing [1] 68/19</p> <p>discovery [2] 4/8 48/16</p> <p>discuss [1] 35/19</p> <p>discussed [1] 14/6</p> <p>discussing [2] 42/5 42/8</p> <p>discussion [2] 74/4 76/5</p> <p>disingenuous [1] 48/15</p> <p>dismissed [1] 24/6</p> <p>disproven [1] 61/3</p> <p>dispute [12] 16/2 25/21 34/18 35/2 35/12 35/21 45/4 45/19 47/17 60/15 60/23 61/11</p> <p>disputed [1] 48/6</p> <p>disputes [1] 19/10</p> <p>disputing [1] 48/8</p> <p>distinct [3] 57/24 59/2 59/13</p> <p>distinction [1] 75/3</p> <p>distinctions [1] 25/14</p> <p>distinguish [1] 75/2</p> <p>DISTRICT [2] 1/2 1/11</p> <p>diverge [2] 28/21 29/1</p> <p>Division [1] 71/7</p> <p>Dixon [2] 66/4 66/8</p> <p>do [98]</p> <p>document [10] 2/25 3/1 3/1 40/24 40/25 58/12 58/12 58/13 58/13 58/14</p> <p>Document 227 [1] 58/12</p> <p>Document 232 [1] 58/13</p> <p>documents [6] 36/9</p>	<p>42/21 42/25 43/1 48/12 48/13</p> <p>does [31] 6/21 9/5 12/12 12/21 23/1 26/4 27/21 29/13 29/19 37/7 38/23 39/25 40/1 42/17 49/5 58/16 59/9 59/14 62/16 62/19 65/4 65/7 65/8 68/9 68/10 70/25 72/7 72/7 74/20 75/18 77/18</p> <p>doesn't [13] 16/2 22/1 23/6 24/7 26/13 32/11 32/17 46/14 47/8 48/17 51/24 64/1 69/19</p> <p>dog [1] 42/25</p> <p>doing [10] 11/24 22/20 33/15 41/8 45/12 51/19 55/13 55/14 70/5 70/15</p> <p>don't [63] 12/5 12/7 12/16 13/2 15/22 21/2 21/8 21/14 21/14 21/19 21/23 22/5 23/2 24/20 26/7 26/8 27/3 27/3 28/16 30/13 30/18 31/1 31/6 31/11 31/12 31/12 31/19 32/9 37/19 38/1 39/7 40/24 42/13 43/9 43/10 43/22 44/10 44/15 45/21 46/1 47/15 48/2 48/13 50/3 50/12 52/1 52/18 52/23 54/25 55/1 55/4 55/4 55/10 56/5 56/6 57/4 57/7 57/13 57/14 60/12 71/25 72/21 72/23</p> <p>done [17] 4/9 8/15 10/18 11/7 13/11 17/17 19/18 20/14 23/9 23/10 44/14 46/3 46/8 54/9 55/13 63/10 65/6</p> <p>down [4] 24/10 24/12 24/12 58/17</p> <p>dozens [1] 42/20</p> <p>drafted [1] 72/12</p> <p>draw [1] 59/18</p> <p>due [3] 8/24 27/15 62/1</p> <p>duplicitousness [1] 33/15</p> <p>during [3] 6/25 11/5 40/22</p> <p>DVD [2] 77/21 77/23</p> <p>E</p> <p>e-mails [1] 51/16</p> <p>each [3] 3/4 39/12 57/16</p> <p>earlier [1] 64/18</p> <p>earn [1] 35/14</p> <p>easier [1] 78/7</p> <p>easy [1] 45/20</p> <p>eat [1] 42/25</p> <p>EDCR [5] 39/1 73/13 78/7 78/13 78/16</p> <p>effect [1] 70/12</p> <p>effectuated [1] 25/7</p> <p>efforts [1] 53/7</p> <p>eight [1] 10/2</p> <p>either [7] 4/19 10/1</p>	<p>32/15 44/11 44/16 56/24 77/8</p> <p>election [5] 24/6 27/5 30/12 30/17 31/15</p> <p>elections [2] 27/5 27/6</p> <p>element [5] 43/5 43/22 44/10 45/2 51/1</p> <p>elements [9] 8/20 13/24 15/5 22/11 38/16 38/23 47/21 47/22 68/11</p> <p>eliminate [2] 61/20 70/12</p> <p>else [5] 12/12 18/2 31/20 43/14 66/1</p> <p>embattled [1] 4/15</p> <p>emergency [3] 28/1 33/4 54/7</p> <p>employees [4] 25/17 67/21 69/14 69/18</p> <p>encompassing [1] 30/15</p> <p>end [4] 2/25 3/14 3/15 21/5</p> <p>ends [3] 18/3 34/24 35/21</p> <p>Energy [1] 61/24</p> <p>enforce [1] 59/25</p> <p>enjoined [1] 68/10</p> <p>enough [3] 30/17 30/19 64/15</p> <p>entered [4] 51/7 51/8 51/15 73/2</p> <p>entire [1] 17/13</p> <p>entirety [2] 33/19 67/9</p> <p>entities [7] 10/2 10/3 10/6 25/18 67/21 69/14 69/17</p> <p>entitled [5] 26/9 26/10 36/4 45/22 79/8</p> <p>entity [2] 2/17 61/19</p> <p>entry [2] 42/20 70/23</p> <p>epitome [1] 6/5</p> <p>equal [3] 17/9 20/12 31/10</p> <p>equally [1] 17/15</p> <p>equitable [1] 66/6</p> <p>equivalent [1] 34/20</p> <p>escrow [3] 7/13 7/16 7/21</p> <p>ESQ [2] 1/17 1/21</p> <p>essentially [1] 52/20</p> <p>established [1] 43/11</p> <p>et [3] 19/12 69/18 75/14</p> <p>et cetera [3] 19/12 69/18 75/14</p> <p>evaluating [1] 56/11</p> <p>even [22] 6/19 8/24 15/22 15/25 16/2 20/10 23/3 24/5 29/16 29/20 30/18 35/16 35/17 35/19 36/24 37/17 46/23 47/18 53/21 53/21 67/6 68/8</p> <p>ever [6] 7/21 40/6 40/9 48/6 56/6 57/3</p> <p>every [12] 4/10 12/9 22/23 22/24 22/24</p>
---	---	---	---	---

<p>E</p> <p>every... [7] 26/15 26/15 26/16 27/23 40/24 40/25 45/1</p> <p>everybody [1] 71/12</p> <p>everybody's [3] 54/22 54/23 54/23</p> <p>everyone [3] 27/6 45/11 72/17</p> <p>everyone's [1] 67/10</p> <p>everything [4] 48/15 53/6 68/3 69/15</p> <p>evidence [28] 7/11 7/14 7/21 8/9 8/11 11/16 15/21 16/15 16/16 16/18 16/19 22/11 28/18 32/9 32/14 32/19 33/9 36/6 39/22 42/14 43/4 47/17 49/6 49/10 50/8 50/9 51/6 58/23</p> <p>evidentiary [2] 37/6 39/17</p> <p>exact [5] 18/15 20/12 22/2 37/6 44/7</p> <p>exactly [5] 22/20 31/2 31/20 37/4 77/3</p> <p>example [1] 19/24</p> <p>exceed [1] 5/1</p> <p>excellent [4] 62/7 62/7 73/22 73/22</p> <p>except [2] 25/15 25/16</p> <p>exchange [2] 13/5 35/23</p> <p>excuse [1] 36/19</p> <p>exercise [1] 8/1</p> <p>Exhibit [6] 7/15 36/19 36/19 38/24 39/24 61/5</p> <p>Exhibit 17 [1] 7/15</p> <p>Exhibit 19 [1] 36/19</p> <p>Exhibit 21 [1] 36/19</p> <p>Exhibit 26 [2] 38/24 39/24</p> <p>Exhibit 32 [1] 61/5</p> <p>exhibits [2] 36/7 43/25</p> <p>Exhibits 14 [1] 36/7</p> <p>exist [1] 22/22</p> <p>existing [1] 60/15</p> <p>expanding [1] 69/11</p> <p>expeditiously [1] 72/13</p> <p>experience [1] 22/24</p> <p>expire [1] 70/25</p> <p>expiring [1] 67/1</p> <p>explain [2] 29/2 56/18</p> <p>explained [1] 52/2</p> <p>expressed [1] 74/10</p> <p>extended [1] 71/9</p> <p>extent [5] 14/2 49/20 69/20 70/5 74/8</p>	<p>factious [1] 34/19</p> <p>factors [1] 74/3</p> <p>facts [5] 17/15 20/12 35/11 35/12 39/22</p> <p>factual [7] 19/10 28/16 30/3 35/6 35/10 35/13 39/17</p> <p>failed [3] 43/15 43/15 43/16</p> <p>failure [1] 48/12</p> <p>fairly [1] 4/25</p> <p>fairness [2] 37/13 46/2</p> <p>faith [4] 8/11 8/16 8/18 50/4</p> <p>familiar [1] 14/1</p> <p>Family [1] 71/7</p> <p>far [2] 37/15 61/2</p> <p>fashion [1] 23/21</p> <p>favor [9] 14/21 16/2 35/8 64/9 65/8 65/9 65/15 65/20 65/24</p> <p>favours [2] 16/3 65/19</p> <p>February [16] 14/14 14/15 17/14 18/13 20/7 24/16 24/18 24/20 30/23 32/1 46/13 52/9 53/2 60/24 61/5 74/25</p> <p>February 2022 [1] 14/14</p> <p>federal [3] 59/17 60/19 60/20</p> <p>feedback [1] 21/10</p> <p>feel [2] 39/9 74/12</p> <p>feels [1] 12/18</p> <p>Ferguson [3] 36/10 36/18 37/2</p> <p>fide [4] 28/22 28/23 38/18 43/22</p> <p>Fifth [2] 61/22 61/25</p> <p>fight [2] 33/16 34/21</p> <p>fighting [1] 57/16</p> <p>figuratively [1] 72/17</p> <p>figure [7] 5/7 5/16 13/15 27/5 53/4 53/14 57/17</p> <p>file [1] 15/8</p> <p>filed [6] 6/13 9/7 9/10 15/7 48/7 52/19</p> <p>filing [3] 13/6 29/25 54/7</p> <p>final [3] 13/1 13/23 60/17</p> <p>find [8] 11/20 62/19 66/12 66/17 66/18 68/1 68/17 69/19</p> <p>finding [3] 7/5 62/16 66/22</p> <p>finds [4] 19/4 59/14 63/12 68/18</p> <p>fine [14] 3/14 12/4 22/8 23/14 26/22 28/14 38/9 38/11 39/15 49/23 55/20 70/6 73/10 74/5</p> <p>finish [3] 39/9 58/5 58/8</p> <p>finished [1] 58/6</p> <p>first [16] 3/18 36/16 38/7 40/22 41/10 41/22 43/14 51/7 53/25 58/20</p>	<p>58/24 66/14 67/19 71/19 73/7 75/5</p> <p>five [2] 40/1 40/2</p> <p>fix [1] 23/11</p> <p>Florida [2] 7/7 7/18</p> <p>flush [1] 3/4</p> <p>fly [2] 38/3 38/6</p> <p>focus [1] 38/7</p> <p>focuses [1] 52/8</p> <p>focusing [1] 61/9</p> <p>folks [1] 73/15</p> <p>follow [1] 57/13</p> <p>foreseen [1] 12/13</p> <p>form [2] 48/2 48/3</p> <p>formal [5] 18/19 18/20 22/5 45/9 49/4</p> <p>formally [1] 39/6</p> <p>forth [5] 15/15 18/19 45/9 59/14 61/5</p> <p>forthcoming [1] 35/13</p> <p>forward [6] 27/7 52/22 52/24 53/1 54/6 65/1</p> <p>Foster [1] 40/14</p> <p>found [3] 67/13 74/15 74/22</p> <p>four [9] 11/24 23/23 23/23 24/1 24/3 38/16 38/17 57/23 67/16</p> <p>fourth [1] 18/12</p> <p>fraud [7] 7/2 14/20 38/20 38/21 44/6 48/8 75/14</p> <p>free [7] 8/14 26/8 33/10 37/9 37/10 39/9 74/12</p> <p>FTE [92]</p> <p>FTE's [16] 4/3 5/12 5/20 6/22 6/24 7/8 10/19 14/15 15/10 15/10 16/5 35/8 44/22 47/25 48/4 50/24</p> <p>full [1] 76/5</p> <p>fully [1] 60/25</p> <p>further [9] 54/17 55/15 55/17 55/22 56/1 56/18 57/11 69/23 77/8</p> <p>Furthermore [2] 8/8 10/15</p> <p>futility [1] 19/25</p> <p>future [4] 36/1 51/12 58/17 78/3</p>	<p>45/23 45/23 46/1 46/7 46/17 48/16 48/18</p> <p>49/23 50/17 51/3 51/8 51/13 51/24 53/6 54/21 55/17 55/25 56/19 63/3 64/1 67/17 69/16 72/12 72/20 73/1 77/20 77/21 77/23 78/10</p> <p>gets [3] 5/18 30/1 30/13</p> <p>getting [1] 34/6</p> <p>give [16] 2/25 22/13 26/8 27/10 28/18 31/7 31/8 40/24 42/21 43/2 43/2 48/14 75/25 76/7 76/7 77/15</p> <p>given [6] 35/16 43/13 47/17 50/6 57/6 74/25</p> <p>gives [2] 11/3 56/21</p> <p>giving [3] 24/19 45/12 62/22</p> <p>go [34] 3/18 9/14 13/25 16/11 16/19 18/10 20/9 21/1 21/3 25/1 27/2 29/7 30/2 38/24 39/9 40/12 47/2 54/24 56/20 56/24 63/8 63/11 65/23 66/9 66/9 66/10 67/12 68/10 71/19 72/11 72/24 73/23 75/18 78/4</p> <p>goes [12] 12/12 19/19 31/16 35/19 37/19 37/20 37/21 37/21 37/22 61/9 62/19 65/20</p> <p>going [65] 2/3 3/2 3/11 3/12 3/13 10/24 11/14 13/25 17/4 21/12 21/19 22/8 23/18 25/1 27/6 28/13 37/17 40/12 40/13 40/25 41/13 44/24 47/2 47/24 48/21 49/16 49/22 51/22 53/13 54/10 57/18 58/24 59/8 63/4 63/8 63/16 65/9 66/12 66/17 66/18 67/5 67/16 68/1 68/17 69/25 70/4 70/15 70/19 70/21 70/22 71/8 71/9 71/22 71/23 72/15 72/24 74/17 74/17 75/24 77/7 77/20 77/23 77/25 78/1 78/14</p> <p>gone [2] 24/9 43/1</p> <p>good [9] 2/6 2/12 2/16 8/11 8/15 8/18 42/14 50/4 70/6</p> <p>got [14] 2/22 2/22 2/23 8/24 12/5 21/12 32/21 36/25 43/1 52/6 56/10 65/10 71/4 78/8</p> <p>governance [4] 14/5 64/2 64/25 65/22</p> <p>granted [4] 14/21 18/18 45/8 67/15</p> <p>granting [2] 19/18 69/9</p> <p>grants [2] 24/21 53/12</p> <p>great [13] 19/8 19/16 25/6 27/1 30/17 31/15 32/12 32/13 33/24</p>	<p>36/22 39/19 78/17 79/3</p> <p>greater [1] 57/9</p> <p>group [9] 1/4 2/9 2/13 3/20 18/5 22/25 23/1 31/2 31/4</p> <p>guess [2] 12/23 52/25</p> <p>guys [1] 21/9</p>
<p>F</p> <p>F.3d [2] 60/21 61/24</p> <p>faced [1] 50/11</p> <p>fact [13] 20/9 22/1 22/1 28/20 30/6 35/22 37/8 43/7 43/7 50/20 61/21 62/17 63/23</p>		<p>G</p> <p>gain [1] 64/12</p> <p>Gaming [1] 62/14</p> <p>gap [4] 71/22 71/24 72/3 72/25</p> <p>garbage [1] 33/16</p> <p>gave [6] 8/22 24/11 32/19 48/7 51/16 62/3</p> <p>general [1] 65/15</p> <p>genuine [1] 60/15</p> <p>get [59] 3/18 5/11 6/17 8/25 10/14 12/9 13/18 17/5 17/16 20/7 20/14 26/5 27/12 28/16 29/7 30/20 31/14 33/10 34/2 34/24 36/4 36/8 36/9 37/2 37/3 43/9 43/10 43/22 44/10 44/15</p>		<p>H</p> <p>had [22] 9/17 10/18 14/22 17/21 18/8 21/25 22/4 23/8 35/18 35/24 42/25 44/8 44/9 44/12 44/13 48/22 50/6 51/10 58/6 59/21 62/3 62/6</p> <p>handle [2] 36/5 71/24</p> <p>handled [1] 77/7</p> <p>happen [2] 68/6 70/4</p> <p>happened [5] 33/8 34/13 34/16 52/16 56/2</p> <p>happening [4] 27/3 28/17 34/18 55/22</p> <p>hard [2] 52/15 53/6</p> <p>hardship [2] 64/23 65/4</p> <p>hardships [5] 64/7 64/8 64/23 64/24 65/24</p> <p>harm [12] 6/16 13/25 34/10 37/21 37/25 37/25 37/25 63/12 63/13 66/6 66/19 68/13</p> <p>harmed [3] 44/20 63/24 64/1</p> <p>harms [2] 14/6 16/2</p> <p>has [97]</p> <p>hasn't [4] 9/17 33/8 66/19 69/5</p> <p>have [188]</p> <p>haven't [7] 32/7 32/13 32/14 43/11 44/14 51/12 66/9</p> <p>having [6] 35/19 38/15 60/15 70/2 74/18 74/19</p> <p>he [17] 10/2 10/21 10/21 39/25 39/25 40/1 40/10 42/17 42/18 43/19 43/21 44/7 50/20 53/21 57/8 72/22 72/25</p> <p>he's [5] 40/6 40/6 40/8 43/20 72/16</p> <p>heads [4] 76/1 76/7 76/7 76/9</p> <p>hear [9] 21/9 21/11 71/11 71/14 71/19 72/5 72/14 74/3 78/13</p> <p>heard [6] 6/15 15/9 16/14 17/4 17/10 53/20</p> <p>hearing [13] 3/4 4/2 6/25 7/9 11/5 11/18 17/19 18/2 18/8 19/2 23/20 41/2 53/18</p> <p>held [1] 70/20</p> <p>Heller [2] 59/16 62/14</p> <p>help [1] 68/5</p> <p>her [2] 20/21 26/9</p> <p>Herbst [1] 62/14</p> <p>here [26] 19/23 22/12 24/25 27/16 27/18 28/15 29/2 29/17 32/9</p>

<p>H</p> <p>here... [17] 36/6 38/24 43/17 52/21 59/5 59/15 59/20 59/24 60/4 60/21 64/15 65/13 69/4 74/14 74/24 77/6 78/8</p> <p>here's [6] 31/6 35/14 42/23 58/10 59/8 70/24</p> <p>hereby [1] 79/7</p> <p>herrings [1] 48/4</p> <p>hide [1] 35/5</p> <p>hiding [1] 28/17</p> <p>higher [1] 45/25</p> <p>him [2] 37/3 40/10</p> <p>himself [1] 40/8</p> <p>his [9] 10/1 10/20 39/23 47/3 49/22 57/8 72/16 72/23 72/23</p> <p>hit [1] 30/2</p> <p>hold [1] 17/18</p> <p>holders [1] 43/25</p> <p>Holdings [3] 48/24 49/2 49/3</p> <p>holds [1] 18/17</p> <p>homework [1] 42/25</p> <p>Honor [30] 2/12 2/16 3/19 4/22 6/21 9/6 18/5 18/11 22/7 23/13 24/6 24/11 28/10 28/13 28/13 40/1 46/3 46/18 55/1 56/20 58/9 71/24 72/9 73/7 73/20 76/1 76/18 76/20 78/9 79/2</p> <p>HONORABLE [1] 1/11</p> <p>Hornish [1] 60/18</p> <p>horse [1] 52/2</p> <p>horses [1] 17/7</p> <p>hotly [1] 62/10</p> <p>housekeeping [2] 73/25 76/15</p> <p>how [9] 24/19 26/4 26/5 28/10 40/19 45/19 54/21 56/20 77/7</p> <p>however [8] 13/16 15/12 21/24 52/11 68/6 69/12 70/23 71/24</p> <p>huge [2] 65/11 65/14</p> <p>huh [5] 2/7 22/17 23/25 77/9 77/16</p> <p>hundred [2] 28/9 58/20</p> <p>hypothetical [1] 62/13</p>	<p>41/24 41/24 42/3 42/4 42/15 46/3 46/8 47/2 49/15 50/1 50/1 54/7 54/10 55/16 55/24 55/25 56/11 58/24 61/14 63/16 64/23 65/5 67/5 67/16 72/15 73/15 77/14 78/14</p> <p>I've [6] 32/21 45/3 52/2 56/10 61/21 78/8</p> <p>i.e [2] 5/13 8/22</p> <p>idea [1] 29/22</p> <p>identical [1] 7/19</p> <p>identify [5] 6/16 12/17 12/19 12/21 39/12</p> <p>if [78] 3/13 3/14 3/14 4/3 5/18 7/15 10/5 10/9 10/15 13/11 13/17 15/22 18/1 18/18 19/12 19/23 20/22 21/5 21/8 22/7 23/7 23/13 24/21 26/19 27/10 28/13 30/16 30/16 32/2 32/3 34/10 35/19 37/23 37/24 38/1 38/3 38/15 39/23 40/23 41/10 45/8 46/23 49/20 53/12 53/23 54/13 54/16 55/16 56/7 56/9 56/17 57/2 57/4 57/6 57/13 57/14 57/17 58/1 63/24 64/18 67/6 70/3 70/9 71/4 71/6 71/8 71/15 72/6 72/16 72/21 73/4 73/13 74/5 74/5 74/5 76/10 77/6 78/6</p> <p>ignore [2] 22/7 25/7</p> <p>illegal [2] 23/2 31/18</p> <p>illegally [1] 28/7</p> <p>imminent [1] 13/6</p> <p>impact [3] 22/14 23/5 38/21</p> <p>impacting [1] 23/6</p> <p>impacts [1] 77/13</p> <p>implied [1] 74/9</p> <p>important [2] 10/14 13/16</p> <p>importantly [1] 9/21</p> <p>improper [1] 16/14</p> <p>imputed [1] 47/10</p> <p>in [222]</p> <p>inaccurate [1] 8/12</p> <p>inadmissible [1] 16/19</p> <p>inadvertently [1] 71/13</p> <p>inbox [1] 78/16</p> <p>INC [3] 1/4 1/7 1/23</p> <p>include [4] 60/21 67/20 69/11 69/13</p> <p>including [1] 67/24</p> <p>inclusion [1] 36/23</p> <p>inconsistent [2] 34/13 54/12</p> <p>incorporate [1] 3/14</p> <p>incredibly [1] 58/1</p> <p>incursions [1] 45/1</p> <p>independent [1] 4/15</p> <p>independently [1] 69/20</p> <p>indicated [1] 40/9</p>	<p>indication [1] 13/12</p> <p>indicia [1] 75/12</p> <p>indicted [4] 37/5 37/5 44/6 50/20</p> <p>indirectly [1] 23/5</p> <p>indiscernible [12] 11/1 23/24 24/23 28/1 28/20 46/9 51/15 54/19 63/6 65/7 67/5 75/8</p> <p>individuals [5] 26/1 61/12 61/12 69/17 69/18</p> <p>ineffective [1] 36/16</p> <p>inextricably [1] 10/11</p> <p>information [2] 26/9 57/9</p> <p>infringed [2] 27/10 27/14</p> <p>injunction [51] 1/14 2/22 3/18 13/24 15/6 16/9 19/2 19/18 22/10 26/15 26/16 31/24 33/25 34/3 38/17 41/2 43/6 45/2 45/5 52/12 53/22 54/15 56/4 58/12 58/15 59/5 59/7 61/14 61/16 63/3 63/4 63/9 63/11 63/19 64/10 66/2 66/11 66/13 67/13 67/15 67/20 68/3 68/13 69/16 70/11 70/16 70/18 70/21 71/3 74/24 75/15</p> <p>injunctions [1] 69/13</p> <p>injunctive [6] 23/15 24/19 34/17 43/11 43/14 75/25</p> <p>INNOVATIV [116]</p> <p>Innovativ's [19] 5/21 27/22 28/3 28/21 29/6 32/8 40/7 40/11 45/5 45/20 54/6 57/22 60/5 61/20 68/16 68/19 68/20 70/1 70/8</p> <p>Innovative [1] 76/17</p> <p>insiders [3] 32/6 32/6 32/12</p> <p>instead [2] 28/6 70/20</p> <p>instructed [1] 14/17</p> <p>intent [2] 4/4 12/10</p> <p>intention [1] 74/8</p> <p>interest [12] 6/8 16/1 16/3 37/22 38/2 44/21 60/1 60/8 60/16 60/16 61/8 62/3</p> <p>interesting [3] 22/16 22/17 29/19</p> <p>interestingly [1] 30/25</p> <p>interests [2] 28/21 29/1</p> <p>interfere [8] 29/6 29/16 54/6 57/22 68/16 68/25 70/1 70/10</p> <p>interfered [1] 30/11</p> <p>interference [6] 14/2 14/4 47/23 53/15 66/5 72/10</p> <p>interferes [1] 55/15</p> <p>interfering [2] 30/9</p>	<p>70/8</p> <p>interrelated [1] 10/12</p> <p>into [22] 7/13 7/16 10/10 36/6 41/6 41/11 49/23 51/7 51/9 51/15 51/24 58/21 58/21 58/22 66/1 67/9 67/10 67/17 69/21 70/13 76/3 78/4</p> <p>invalid [3] 17/14 45/1 55/3</p> <p>inverse [1] 19/16</p> <p>involved [2] 48/1 50/22</p> <p>involves [1] 60/16</p> <p>irrelevant [2] 33/5 33/21</p> <p>irreparable [7] 13/25 14/6 37/25 37/25 63/12 63/13 66/6</p> <p>irreparably [2] 63/24 63/25</p> <p>is [376]</p> <p>isn't [8] 25/20 26/8 32/9 33/22 34/6 45/10 57/23 70/14</p> <p>issuance [3] 10/5 15/19 52/21</p> <p>issuances [5] 15/22 32/6 32/7 32/11 32/12</p> <p>issue [41] 10/18 10/22 13/2 13/10 13/18 19/24 20/7 22/2 22/10 30/21 30/24 33/2 33/5 35/20 39/11 41/10 41/18 42/4 42/16 55/1 55/10 55/11 57/15 58/14 58/24 60/4 60/9 60/24 60/25 61/1 61/9 61/23 63/5 66/11 66/11 67/13 69/25 70/2 70/18 74/23 76/25</p> <p>issued [20] 4/18 4/21 9/1 9/25 10/9 10/15 13/12 15/23 28/7 33/8 33/13 46/22 50/5 50/25 54/18 56/13 56/25 57/1 57/4 70/10</p> <p>issues [21] 11/15 13/15 17/5 22/12 42/10 44/9 62/9 62/10 62/20 63/1 63/15 63/20 63/21 64/16 64/25 66/20 69/2 70/14 72/3 75/13 77/11</p> <p>issuing [6] 3/25 13/1 13/4 13/9 31/22 69/23</p> <p>it [278]</p> <p>it's [82]</p> <p>its [27] 5/1 5/20 8/5 8/14 8/24 9/16 12/19 13/6 13/7 25/17 33/18 34/6 35/3 36/22 38/3 39/6 40/5 41/12 44/25 58/19 63/14 63/24 64/24 67/21 69/10 74/19 74/19</p> <p>itself [2] 24/8 29/2</p>	<p>J-2 shares [1] 19/6</p> <p>Jacob [1] 7/18</p> <p>jail [1] 33/10</p> <p>January [2] 44/2 44/2</p> <p>January 31st [1] 44/2</p> <p>JCCR [1] 64/21</p> <p>JD [1] 1/23</p> <p>Jenga [1] 17/12</p> <p>JOANNA [1] 1/11</p> <p>job [1] 16/17</p> <p>Joseph [2] 10/15 53/8</p> <p>journal [1] 42/20</p> <p>JUDGE [3] 1/11 21/7 22/20</p> <p>judgment [16] 6/13 11/15 14/21 15/14 18/16 19/23 22/8 35/8 43/13 49/1 49/13 49/19 49/19 49/24 75/4 75/10</p> <p>judgments [1] 58/16</p> <p>judicial [5] 6/24 34/23 59/21 60/9 60/18</p> <p>jump [1] 46/19</p> <p>juncture [7] 61/3 63/15 63/21 65/4 69/24 70/24 75/15</p> <p>June [1] 24/7</p> <p>jurisdiction [10] 5/1 5/4 5/6 5/15 8/1 8/3 11/22 59/1 59/3 59/9</p> <p>jurisdictional [1] 59/12</p> <p>just [80]</p> <p>justiciable [3] 6/8 60/6 60/14</p>
<p>I</p> <p>I nor [1] 45/23</p> <p>I Series [7] 17/11 17/16 18/14 18/21 19/19 21/24 22/4</p> <p>I'd [4] 21/1 22/15 34/25 76/11</p> <p>I'll [14] 3/13 3/15 20/14 37/1 37/2 37/2 37/3 37/3 42/3 46/21 58/6 66/9 72/12 74/12</p> <p>I'm [44] 3/11 13/25 17/20 17/20 20/11 23/20 25/1 26/10 26/12 27/11 35/6 35/9 37/15 40/12 40/25 41/13</p>			<p>J</p> <p>J-1 and [1] 19/6</p> <p>J-2 [1] 19/13</p>	<p>K</p> <p>keep [5] 9/19 25/22 32/21 40/12 57/16</p> <p>keeping [2] 21/20 66/25</p> <p>kicker [1] 42/23</p> <p>kind [6] 3/3 33/16 37/6 37/16 43/12 44/7</p> <p>King [2] 40/14 60/18</p> <p>KISHNER [1] 1/11</p> <p>know [38] 6/23 8/22 10/3 10/16 10/21 11/17 13/19 13/19 14/1 14/2 15/3 15/22 21/2 21/8 21/14 24/22 27/2 27/4 37/1 46/4 46/4 47/15 47/19 48/3 48/17 50/4 50/11 51/12 53/5 53/7 55/3 55/5 57/12 57/13 60/12 69/12 72/21 72/23</p> <p>knowing [2] 36/25 65/1</p> <p>knowledge [9] 26/19 39/21 39/25 40/7 40/11 42/18 47/8 47/9 57/9</p> <p>known [1] 33/10</p>
			<p>L</p> <p>lack [4] 8/2 10/17 16/19 64/25</p> <p>lacked [2] 5/21 6/4</p> <p>land [1] 78/4</p> <p>language [6] 7/4 7/19 8/17 26/1 37/7 71/2</p>	

<p>L</p> <p>LARA [1] 1/23</p> <p>LAS [1] 1/24</p> <p>last [5] 7/8 34/1 40/13 46/17 69/10</p> <p>later [2] 20/14 23/2</p> <p>Lateral [1] 2/17</p> <p>latest [1] 4/3</p> <p>law [39] 4/7 4/13 4/16 4/20 5/14 6/19 6/20 6/21 7/5 7/9 7/18 8/6 10/19 11/5 16/4 17/9 17/15 18/15 20/12 22/3 31/10 41/21 41/22 42/9 42/14 47/9 47/9 49/3 50/5 57/13 58/22 59/10 59/20 60/21 61/23 65/22 69/12 74/23 75/8</p> <p>laws [1] 61/2</p> <p>lawsuit [1] 50/21</p> <p>leads [1] 75/22</p> <p>least [5] 45/24 61/3 61/15 77/10 77/11</p> <p>leave [4] 15/7 24/21 53/12 78/14</p> <p>legal [12] 16/23 17/1 17/3 30/3 31/23 34/6 35/7 43/15 43/16 59/21 59/25 61/8</p> <p>legally [2] 38/19 60/8</p> <p>legislature [2] 59/16 65/12</p> <p>lengthy [1] 25/13</p> <p>less [1] 4/17</p> <p>let [10] 2/25 21/3 30/20 31/19 45/3 45/6 57/14 71/14 71/19 72/14</p> <p>let's [18] 22/12 22/18 27/16 32/2 38/24 38/24 40/12 42/24 43/17 45/11 45/22 57/15 57/17 58/20 63/11 67/12 72/5 72/16</p> <p>letters [1] 37/7</p> <p>license [1] 29/13</p> <p>lie [1] 37/2</p> <p>lied [2] 35/17 35/22</p> <p>lies [1] 69/4</p> <p>light [5] 20/21 46/21 56/15 77/4 77/5</p> <p>like [25] 3/8 18/6 19/24 20/15 20/19 21/17 22/4 22/15 23/2 26/24 27/3 30/13 31/1 31/1 31/12 34/25 46/5 48/7 52/11 53/1 57/1 68/6 71/15 73/21 76/25</p> <p>likelihood [15] 14/9 15/20 19/5 19/12 19/19 20/2 20/10 20/11 21/3 34/8 37/20 74/4 74/13 74/21 75/16</p> <p>likely [1] 15/13</p> <p>limitation [1] 68/17</p> <p>limited [2] 32/17 67/24</p> <p>limiting [1] 55/24</p> <p>limits [1] 20/4</p> <p>line [2] 27/18 28/6</p>	<p>lines [1] 28/2</p> <p>lines [1] 28/2</p> <p>list [4] 9/24 24/10 33/23 56/23</p> <p>listening [1] 54/22</p> <p>literally [2] 42/20 72/17</p> <p>litigant [2] 30/1 35/4</p> <p>litigants [2] 42/24 65/17</p> <p>litigate [4] 4/1 4/7 4/23 12/11</p> <p>litigating [1] 53/6</p> <p>litigation [9] 4/10 10/3 48/2 60/1 61/19 64/13 65/17 68/7 68/21</p> <p>little [6] 2/24 3/3 20/14 36/6 37/2 45/24</p> <p>live [1] 37/3</p> <p>Loan [1] 47/11</p> <p>long [2] 40/2 40/2</p> <p>longer [1] 6/4</p> <p>look [21] 5/12 7/15 26/8 27/25 39/23 45/5 51/17 52/17 59/24 60/4 60/20 61/1 61/2 62/25 64/7 65/7 65/21 65/25 67/14 72/22 75/9</p> <p>looked [3] 33/19 61/7 68/12</p> <p>looking [7] 36/24 53/10 53/24 53/25 56/11 61/14 64/9</p> <p>looks [3] 57/1 61/7 62/17</p> <p>lose [3] 62/1 63/14 74/19</p> <p>loses [1] 63/24</p> <p>lot [1] 63/1</p> <p>lots [1] 59/11</p> <p>lunch [1] 37/9</p> <p>M</p> <p>machinery [1] 59/22</p> <p>Madam [1] 2/4</p> <p>made [7] 18/15 22/16 33/11 33/15 35/15 39/21 49/21</p> <p>magically [2] 29/8 36/8</p> <p>mails [1] 51/16</p> <p>main [1] 11/24</p> <p>maintain [14] 3/22 4/23 5/6 5/10 11/13 11/17 11/23 12/4 12/11 12/14 13/21 13/22 16/9 65/20</p> <p>maintained [1] 6/17</p> <p>maintaining [3] 16/6 16/6 68/23</p> <p>majority [7] 4/17 26/14 27/8 27/11 45/24 46/12 46/14</p> <p>make [16] 2/11 8/16 11/11 17/23 18/7 20/15 35/7 40/25 41/13 45/20 58/7 68/24 70/14 71/12 71/21 75/21</p> <p>makes [2] 10/13 21/17</p> <p>making [7] 3/9 31/6 51/16 51/24 53/7 58/19 77/14</p>	<p>man [1] 37/4</p> <p>maneuver [1] 4/6</p> <p>manner [2] 39/6 50/23</p> <p>many [1] 45/19</p> <p>March [13] 7/14 18/17 23/7 26/2 45/7 52/12 53/19 53/19 54/4 54/9 56/2 67/24 68/7</p> <p>March 2020 [1] 7/14</p> <p>March 2023 [1] 23/7</p> <p>math [10] 20/13 20/13 24/18 24/20 25/22 45/4 45/11 45/13 46/21 46/25</p> <p>matter [3] 6/19 26/13 39/17</p> <p>matters [1] 32/3</p> <p>may [22] 3/7 3/7 8/25 10/23 14/12 14/12 44/3 51/20 51/20 54/20 55/6 56/16 56/16 58/17 70/6 71/1 74/2 74/8 74/9 77/8 77/13 77/13</p> <p>May 2020 [2] 8/25 44/3</p> <p>maybe [4] 31/16 53/2 57/13 77/21</p> <p>McNulty [1] 59/22</p> <p>me [32] 2/25 6/6 6/6 11/19 13/23 18/23 18/25 20/22 21/3 28/25 30/20 31/19 36/19 37/2 38/21 40/6 40/9 41/19 42/5 45/3 45/6 57/9 62/8 63/18 63/18 64/20 71/14 71/19 72/14 77/2 77/12 77/14</p> <p>mean [8] 21/2 23/6 26/16 30/25 42/12 50/16 71/22 77/19</p> <p>means [7] 9/24 10/18 12/3 24/17 27/24 44/16 68/20</p> <p>meant [2] 8/17 66/8</p> <p>meantime [2] 5/17 21/7</p> <p>measures [1] 68/5</p> <p>MEDIA [6] 1/4 1/17 2/9 2/13 3/20 18/5</p> <p>meet [2] 72/7 72/7</p> <p>meeting [1] 10/25</p> <p>meetings [1] 10/17</p> <p>meets [1] 73/15</p> <p>members [1] 33/1</p> <p>memorialized [5] 71/6 73/5 73/8 73/14 77/6</p> <p>memorializing [1] 73/17</p> <p>mention [1] 77/5</p> <p>mentioned [3] 45/3 63/17 66/3</p> <p>merely [2] 62/1 64/13</p> <p>merger [3] 49/4 49/8 49/10</p> <p>merits [21] 4/24 6/18 9/18 10/14 14/10 15/21 20/3 20/3 20/3 20/4 20/5 34/9 37/20 48/11 53/4 53/11 53/14 74/5 74/13 74/21 75/16</p> <p>mess [1] 12/7</p>	<p>message [2] 36/17 36/22</p> <p>messaging [1] 12/14</p> <p>met [10] 8/19 13/24 14/23 15/5 22/11 36/15 47/22 62/5 65/25 66/10</p> <p>microphone [1] 32/22</p> <p>middle [4] 17/20 61/19 65/17 68/7</p> <p>might [2] 33/19 46/19</p> <p>million [8] 45/14 45/17 45/22 45/25 46/10 46/11 46/11 46/12</p> <p>mind [2] 21/20 72/3</p> <p>minutes [1] 46/5</p> <p>missed [1] 74/2</p> <p>missing [2] 43/5 44/10</p> <p>misstatements [1] 50/19</p> <p>modified [1] 70/15</p> <p>modify [2] 34/4 69/25</p> <p>moment [2] 17/15 66/3</p> <p>month [5] 13/12 14/15 28/9 28/11 53/2</p> <p>months [2] 44/3 44/5</p> <p>mooted [1] 10/12</p> <p>moots [1] 27/12</p> <p>more [11] 9/21 9/25 10/14 12/9 12/24 16/4 17/25 43/24 66/20 71/1 76/24</p> <p>morning [3] 2/12 2/16 79/4</p> <p>most [2] 10/24 11/2</p> <p>motion [38] 1/14 2/21 2/22 2/25 3/17 3/21 4/22 6/13 6/18 11/15 15/7 15/14 19/23 23/9 23/10 28/1 31/23 31/25 34/3 39/14 39/21 45/5 48/25 49/12 49/19 49/20 52/12 55/7 58/11 58/15 58/23 59/4 59/7 59/22 62/18 64/17 76/3 76/11</p> <p>motions [3] 54/7 58/16 64/19</p> <p>movant [4] 3/17 16/16 16/21 46/17</p> <p>move [5] 29/10 41/18 42/16 65/1 75/24</p> <p>moving [3] 9/21 41/24 49/7</p> <p>Mr [2] 25/11 47/5</p> <p>Mr. [33] 2/18 10/4 10/20 18/4 25/11 25/15 25/16 25/17 29/10 32/18 32/20 32/25 33/2 36/10 36/10 36/18 36/18 36/25 37/2 37/5 38/25 42/17 43/19 46/22 47/3 47/5 47/7 47/8 50/20 56/21 57/3 57/7 72/19</p> <p>Mr. Beys [1] 32/25</p> <p>Mr. Beys's [1] 32/20</p> <p>Mr. Cereghino [4] 29/10 56/21 57/3 72/19</p> <p>Mr. Cereghino's [3]</p>	<p>46/22 47/3 57/7</p> <p>Mr. Coleman [7] 18/4 25/15 25/16 42/17 43/19 47/7 47/8</p> <p>Mr. Coleman's [1] 38/25</p> <p>Mr. Cunningham [3] 10/20 32/18 33/2</p> <p>Mr. De [2] 10/4 47/5</p> <p>Mr. De Silva [3] 2/18 25/11 25/17</p> <p>Mr. Ferguson [3] 36/10 36/18 37/2</p> <p>Mr. Singal [4] 36/18 36/25 37/5 50/20</p> <p>Mr. Suwyn [1] 36/10</p> <p>Ms [1] 71/24</p> <p>Ms. [10] 17/10 18/16 21/8 21/11 22/15 26/9 32/7 72/5 72/14 76/7</p> <p>Ms. Shanks [9] 17/10 18/16 21/8 21/11 22/15 26/9 72/5 72/14 76/7</p> <p>Ms. Shanks' [1] 32/7</p> <p>much [7] 2/14 10/13 21/22 25/12 28/10 46/16 78/18</p> <p>multiple [1] 30/15</p> <p>must [6] 8/11 9/25 11/7 39/17 39/21 60/16</p> <p>mute [1] 21/21</p> <p>Mutual [1] 47/11</p> <p>my [13] 3/9 13/23 16/16 16/19 20/18 21/4 23/11 37/3 42/13 55/17 58/6 72/3 79/9</p> <p>N</p> <p>near [1] 32/22</p> <p>necessarily [2] 63/2 64/5</p> <p>necessary [1] 66/18</p> <p>need [14] 26/7 34/17 45/21 45/24 49/5 54/21 62/10 64/18 68/9 68/10 71/1 71/11 73/14 77/6</p> <p>needed [1] 78/7</p> <p>needs [7] 12/18 66/14 70/7 71/16 72/7 72/8 73/15</p> <p>neither [1] 45/23</p> <p>NETWORKS [3] 1/7 2/10 67/20</p> <p>NEVADA [41] 1/2 2/1 4/6 4/13 4/16 4/20 5/12 5/14 6/20 6/25 8/6 10/19 11/5 16/4 25/14 40/15 42/14 47/9 47/9 47/12 47/13 49/2 49/5 50/5 57/13 59/5 59/10 59/16 59/16 59/17 59/20 59/22 60/3 60/11 60/19 61/23 62/14 65/10 65/13 65/22 66/5</p> <p>never [11] 7/16 11/6 14/22 35/17 36/3 37/8 44/14 48/15 51/5 55/23 59/3</p> <p>new [19] 3/25 4/14</p>
---	---	---	---	---

<p>N</p> <p>new... [17] 5/16 9/8 10/13 12/21 12/22 13/4 32/6 32/11 32/12 32/13 33/6 41/10 42/10 46/22 47/1 52/21 67/25</p> <p>newly [9] 3/24 9/5 10/7 10/11 10/22 20/18 25/4 53/5 54/8</p> <p>next [5] 31/16 58/24 59/13 75/22 77/17</p> <p>night [2] 38/3 38/6</p> <p>Ninth [2] 60/19 60/21</p> <p>no [104]</p> <p>nobody [1] 49/10</p> <p>Nobody's [1] 68/18</p> <p>noise [1] 21/17</p> <p>none [3] 34/10 34/12 37/24</p> <p>nonparties [2] 8/2 69/11</p> <p>nonparty [2] 17/7 26/23</p> <p>nonsense [2] 26/24 31/20</p> <p>nonvoting [1] 17/11</p> <p>nor [3] 35/3 37/6 45/23</p> <p>not [236]</p> <p>note [7] 21/24 27/21 28/19 35/23 37/2 50/19 66/3</p> <p>noted [4] 4/2 11/16 15/7 48/17</p> <p>nothing [10] 7/3 16/2 23/2 31/17 31/17 31/18 33/15 34/9 55/22 62/12</p> <p>nothing's [1] 34/16</p> <p>notice [17] 6/25 8/18 8/19 8/22 8/23 31/7 31/8 40/24 43/18 43/21 44/8 44/9 50/25 51/2 62/22 70/23 76/11</p> <p>notification [1] 76/13</p> <p>November [4] 19/2 19/18 51/7 51/9</p> <p>November 2019 [1] 51/9</p> <p>November 7 [1] 19/2</p> <p>now [32] 6/9 10/3 13/10 16/14 18/9 19/19 22/2 22/15 27/12 28/21 29/22 30/25 32/6 34/15 34/25 37/12 39/8 42/6 45/11 45/16 45/19 49/24 51/19 53/9 55/5 61/7 62/17 63/11 66/13 67/12 67/13 70/15</p> <p>Nowhere [2] 39/25 39/25</p> <p>NRCP [2] 39/1 59/24</p> <p>NRS [10] 7/4 7/6 8/7 8/7 8/13 15/15 51/1 59/11 61/17 65/11</p> <p>NRS 104.8202 [1] 8/13</p> <p>NRS 104.8303 [1] 51/1</p> <p>NRS 78 [3] 59/11 61/17 65/11</p> <p>NRS 78.211 [3] 7/4 7/6</p>	<p>8/7</p> <p>NRS 78.240 [1] 8/7</p> <p>number [18] 11/25 12/7 12/13 12/16 16/23 17/1 18/3 24/8 25/25 27/1 27/1 33/9 45/20 46/11 46/12 54/19 54/19 69/23</p> <p>Number 2 is [1] 12/13</p> <p>Number 3 [1] 12/16</p> <p>O</p> <p>object [8] 36/22 38/25 39/5 39/7 39/8 40/14 40/23 71/22</p> <p>objected [1] 39/3</p> <p>objection [4] 20/15 20/21 26/10 40/25</p> <p>objections [4] 39/3 40/20 41/22 67/11</p> <p>obligation [2] 36/2 38/22</p> <p>observe [1] 18/1</p> <p>obstruct [1] 4/10</p> <p>obstruction [1] 4/9</p> <p>obtain [1] 35/3</p> <p>obtained [1] 35/24</p> <p>obviously [4] 44/24 45/16 69/16 70/21</p> <p>occur [1] 53/23</p> <p>occurred [4] 52/12 53/1 54/4 54/14</p> <p>off [3] 31/3 33/23 37/15</p> <p>offense [1] 28/23</p> <p>offered [2] 36/11 42/15</p> <p>officer [1] 47/10</p> <p>officers [3] 67/21 69/13 69/18</p> <p>oh [4] 42/1 49/15 51/11 56/5</p> <p>okay [59] 2/3 2/8 2/19 2/20 9/14 12/4 16/11 17/5 18/6 19/21 21/20 27/13 30/11 32/1 32/12 32/13 32/18 33/5 33/8 34/4 36/22 38/17 40/4 41/14 41/15 42/3 45/14 46/6 46/7 46/7 46/17 49/15 49/17 53/16 53/19 53/21 54/10 54/12 55/16 57/4 58/3 58/4 58/10 59/8 59/11 61/5 67/19 72/5 72/6 73/3 73/11 73/18 73/21 74/11 75/17 77/2 77/17 78/6 78/12</p> <p>on [109]</p> <p>once [4] 18/14 20/13 55/16 68/11</p> <p>one [55] 6/1 9/10 13/1 13/2 17/12 17/18 17/20 17/25 20/5 22/16 22/25 23/24 24/3 24/12 24/12 25/16 28/11 29/8 29/8 29/19 29/24 30/11 30/14 30/16 30/18 30/21 31/24 31/24 32/17 33/1 35/1 35/2 35/14 37/7 40/1 40/5</p>	<p>40/8 40/14 42/24 44/22 45/10 47/1 48/6 53/25 54/13 60/6 63/21 64/10 67/18 67/19 71/13 74/2 75/6 75/10 79/3</p> <p>ones [3] 18/8 36/9 54/1</p> <p>only [31] 8/10 9/22 11/7 12/1 17/19 18/8 18/18 20/5 21/25 24/18 24/19 26/12 28/23 29/8 30/23 32/25 38/20 39/17 43/19 44/24 45/8 45/25 46/24 47/4 47/6 50/17 58/14 58/20 58/21 67/7 76/25</p> <p>onward [1] 7/10</p> <p>oOo [1] 79/6</p> <p>open [6] 38/5 43/21 56/15 73/13 73/16 73/19</p> <p>operating [2] 12/20 13/20</p> <p>operative [4] 52/8 60/5 60/5 62/24</p> <p>opinions [1] 77/15</p> <p>opportunity [6] 35/11 35/12 47/18 50/7 58/5 58/8</p> <p>oppose [1] 39/20</p> <p>opposing [5] 41/14 58/7 72/15 76/12 78/15</p> <p>opposite [1] 60/15</p> <p>opposition [16] 2/22 3/1 5/20 7/24 7/25 20/16 20/24 21/4 39/2 40/16 40/18 47/19 48/22 49/22 53/20 58/13</p> <p>oppositions [1] 20/22</p> <p>option [1] 55/24</p> <p>or [99]</p> <p>oral [16] 40/22 41/11 41/22 42/10 49/21 54/23 54/23 62/7 67/10 71/5 73/3 73/7 73/22 76/3 76/11 77/4</p> <p>orally [1] 75/23</p> <p>order [35] 5/11 5/17 9/11 9/12 9/24 12/10 12/25 13/19 14/16 18/17 19/2 21/24 45/7 48/20 52/4 52/7 54/5 54/20 58/25 64/22 70/22 70/23 71/3 72/12 72/21 73/1 73/5 73/8 76/6 77/1 77/12 77/18 77/20 78/10 78/14</p> <p>orders [5] 4/2 65/18 68/22 74/15 74/22</p> <p>ordinarily [1] 62/23</p> <p>ordinary [2] 13/20 13/21</p> <p>organize [1] 31/15</p> <p>original [1] 57/17</p> <p>OST [1] 58/13</p> <p>other [36] 6/1 12/3 12/8 12/22 19/24 22/2 22/9 22/17 22/20 22/21 22/23 24/17 25/8 25/8</p>	<p>25/17 25/17 28/3 28/12 29/16 30/24 31/4 31/7 31/11 36/9 43/1 47/21 48/13 50/14 57/16 58/17 58/22 61/18 66/22 69/5 75/12 76/16</p> <p>others [1] 29/15</p> <p>otherwise [1] 64/3</p> <p>our [32] 3/21 4/6 4/7 4/25 7/15 9/3 9/8 9/21 10/4 10/9 10/10 10/12 11/11 12/13 12/23 14/2 14/10 14/21 14/24 15/1 15/3 15/11 15/13 15/17 22/24 49/12 52/2 52/3 53/11 56/7 57/2 79/3</p> <p>out [19] 3/4 5/7 5/17 7/7 8/16 9/21 13/12 13/15 27/5 31/13 33/10 39/6 45/11 46/23 49/12 53/4 53/14 57/17 72/24</p> <p>outcome [1] 36/5</p> <p>outdated [1] 7/9</p> <p>outstanding [3] 36/14 64/15 75/13</p> <p>over [11] 4/13 5/4 5/15 8/1 8/3 11/22 34/21 34/22 57/16 59/9 72/22</p> <p>overcome [1] 37/7</p> <p>overlooks [1] 6/10</p> <p>own [7] 3/8 3/8 6/9 13/7 31/4 36/2 36/5</p> <p>owned [1] 24/8</p> <p>owner [1] 30/14</p> <p>owners [1] 19/11</p> <p>ownership [1] 44/6</p> <p>owns [2] 36/11 65/2</p> <p>P</p> <p>P.3d [1] 40/15</p> <p>page [12] 24/25 27/18 28/1 28/6 40/17 45/6 48/7 71/12 72/18 72/20 73/1 77/10</p> <p>page 2 [2] 24/25 27/18</p> <p>page 3 [1] 28/1</p> <p>page 5 [1] 28/6</p> <p>page 9 and [1] 45/6</p> <p>Pages [1] 2/9</p> <p>paid [12] 35/17 35/18 35/20 37/8 40/13 42/18 42/18 43/3 43/4 43/9 44/13 47/16</p> <p>papers [4] 9/22 27/25 42/13 49/7</p> <p>paragraph [11] 18/17 25/1 32/5 32/16 33/3 33/6 33/18 34/1 40/13 40/13 45/7</p> <p>Paragraph 17 [1] 32/5</p> <p>paragraph 18 [3] 18/17 32/16 45/7</p> <p>Paragraph 19 [1] 33/3</p> <p>paragraph 20 [2] 25/1 33/6</p> <p>Paragraph 21 [1] 33/18</p> <p>Paragraph 22 [1] 34/1</p> <p>paragraphs [2] 19/3 40/2</p>	<p>parallel [1] 23/10</p> <p>Pardon [1] 76/19</p> <p>parenthetical [1] 33/23</p> <p>part [7] 11/20 26/21 46/23 47/25 64/22 67/6 68/2</p> <p>participate [4] 14/4 30/22 64/1 65/2</p> <p>participating [1] 33/1</p> <p>particular [3] 42/5 58/25 60/24</p> <p>parties [25] 1/10 5/2 5/9 5/10 12/11 13/5 13/9 22/14 23/16 24/23 25/8 26/21 33/13 51/8 51/11 59/6 60/15 61/11 63/5 69/12 70/25 71/1 71/5 71/11 71/14</p> <p>party [11] 5/4 26/20 39/13 40/6 51/21 61/10 61/20 62/4 68/18 69/15 77/8</p> <p>party's [1] 3/4</p> <p>pausing [1] 17/20</p> <p>pay [2] 35/20 36/2</p> <p>payment [1] 36/14</p> <p>Payments [1] 42/23</p> <p>pending [9] 4/6 4/19 9/4 15/11 20/6 52/3 64/19 73/5 75/24</p> <p>people [23] 15/23 15/24 17/25 21/16 23/1 23/1 23/3 25/15 26/1 26/12 26/19 27/9 28/12 31/2 32/17 32/18 32/19 45/13 47/4 47/5 47/7 57/1 57/5</p> <p>people's [1] 29/16</p> <p>percent [6] 9/23 15/24 28/9 46/24 51/15 58/20</p> <p>Perfect [1] 73/11</p> <p>performance [2] 8/24 44/2</p> <p>performed [1] 51/12</p> <p>permission [1] 69/24</p> <p>permit [3] 4/14 8/7 15/16</p> <p>permits [3] 7/4 11/6 59/10</p> <p>permitted [2] 4/13 4/16</p> <p>person [4] 26/18 28/23 47/7 77/2</p> <p>person's [1] 47/16</p> <p>personal [12] 4/12 8/5 39/21 39/25 40/7 40/10 42/17 47/8 61/16 64/4 64/4 65/3</p> <p>phone [2] 18/3 21/13</p> <p>phonetic [1] 48/24</p> <p>phrase [2] 52/11 68/6</p> <p>phrased [2] 54/15 58/25</p> <p>phrasing [1] 25/22</p> <p>physical [1] 50/8</p> <p>pills [1] 32/12</p> <p>place [3] 7/13 23/11 57/8</p> <p>placed [3] 7/16 9/16 33/7</p>
---	--	---	---	--

P	preliminary [48] 1/14 2/22 3/18 13/24 15/5 16/9 19/2 19/18 22/9 23/14 31/24 33/24 34/3 38/17 41/2 43/6 43/10 45/1 45/5 52/12 53/22 54/14 55/6 56/3 58/12 58/15 59/4 59/7 61/14 61/16 63/3 63/4 63/19 66/2 66/11 66/13 67/13 67/15 67/20 68/2 68/13 69/13 69/16 70/11 71/3 74/24 75/15 75/25 prepare [1] 78/14 present [5] 51/23 58/23 60/14 61/13 63/20 presentation [2] 3/15 70/22 presented [3] 63/18 67/8 74/24 presently [3] 9/4 17/4 25/20 preserving [1] 42/4 preset [1] 3/15 pretend [1] 42/24 pretending [1] 34/16 pretty [2] 24/24 25/13 prevail [3] 14/24 15/13 15/17 prevent [1] 70/7 prevented [1] 67/22 preventing [1] 42/7 prevention [1] 42/5 previously [3] 3/8 68/4 74/22 principal [3] 40/3 44/5 47/10 principle [1] 59/18 prior [12] 27/5 31/13 32/20 51/13 53/23 64/17 66/17 69/23 74/14 74/22 75/3 75/11 probably [4] 75/24 76/6 76/8 77/25 problem [6] 23/11 28/24 33/17 34/5 36/13 39/23 problematic [1] 11/2 problems [1] 16/22 procedural [1] 28/19 procedurally [2] 23/12 77/7 procedure [1] 29/24 procedures [1] 33/4 proceedings [3] 1/8 79/5 79/8 process [5] 6/14 15/8 27/15 34/23 41/4 produced [1] 36/17 product [1] 48/8 production [1] 47/20 profit [1] 13/8 prohibit [1] 10/5 prohibited [1] 4/6 promise [1] 33/14 promises [1] 33/11 prong [5] 56/11 56/12 62/5 69/1 70/16	prongs [3] 53/25 67/16 67/16 pronouncement [2] 73/4 73/8 proof [1] 57/4 proper [2] 63/7 63/7 properly [1] 50/3 properties [1] 44/7 property [15] 4/12 6/3 6/4 6/9 8/5 14/3 14/3 30/14 55/15 61/17 64/4 64/5 65/3 66/6 66/7 proposes [1] 72/6 prospectively [1] 54/16 protect [5] 27/17 27/23 28/4 31/19 38/2 protectable [2] 60/8 61/8 protected [8] 8/8 8/10 8/13 17/8 47/2 47/23 51/1 62/2 protecting [1] 44/25 protection [2] 29/20 43/23 protections [1] 43/10 prove [2] 38/22 57/8 provide [11] 6/15 14/23 15/21 16/15 16/16 16/18 47/18 51/2 51/22 52/15 78/15 provided [8] 6/22 7/5 7/11 7/23 8/9 8/21 48/23 77/20 provision [1] 11/2 provisions [1] 20/22 public [19] 13/5 16/1 16/3 18/1 18/7 37/22 38/4 44/24 49/9 64/8 64/8 65/9 65/9 65/11 65/14 65/15 65/18 65/19 65/24 pull [1] 21/3 purchase [6] 33/12 35/24 36/1 36/2 43/22 44/4 purchased [1] 40/5 purchaser [1] 8/8 8/10 8/13 28/22 28/23 38/18 47/2 51/1 51/5 51/18 62/2 pure [2] 4/9 47/24 purifier [1] 21/16 purifiers [1] 21/17 purported [2] 15/18 44/3 purportedly [5] 8/1 25/4 28/3 54/4 67/23 purpose [1] 12/21 purposes [14] 32/10 38/13 40/21 41/12 53/13 58/23 59/20 61/15 63/2 66/25 70/19 74/24 75/15 78/2 pursuant [4] 5/16 25/4 67/2 67/15 pursue [1] 15/1 pushback [1] 36/25 put [4] 17/6 20/7 50/24	putative [1] 3/24 Q question [30] 3/3 3/9 3/12 9/3 10/10 14/11 19/21 23/18 25/20 27/9 27/22 29/19 30/8 41/13 41/14 43/6 43/8 43/12 49/5 49/14 51/25 53/17 53/17 55/17 56/10 70/3 70/24 73/23 75/18 76/10 questions [6] 49/10 52/6 58/3 58/6 64/11 76/16 quick [3] 9/10 45/4 49/16 quickly [1] 55/7 quite [4] 24/2 24/6 46/19 53/2 quo [41] 3/22 4/23 5/7 5/11 5/17 6/12 6/16 9/19 11/14 11/17 11/24 11/25 12/5 12/7 12/11 12/13 12/15 12/24 13/14 13/22 16/6 16/10 48/20 52/4 52/7 52/7 52/10 52/14 52/18 52/19 53/3 53/8 53/11 55/21 57/17 64/10 64/13 64/14 65/20 68/10 68/23 quote [2] 8/11 51/22 R raise [3] 19/25 41/21 51/11 raised [4] 7/17 9/3 20/18 21/24 raises [3] 29/18 29/18 30/8 raising [1] 50/2 rather [3] 74/9 75/4 75/5 RE [1] 1/13 reach [1] 9/17 read [4] 8/6 39/24 62/23 62/24 reading [1] 54/22 real [3] 30/14 45/4 62/4 realistically [17] 59/3 61/9 62/8 63/1 63/8 63/13 64/9 64/18 64/22 65/18 66/22 66/24 67/1 68/9 69/4 69/24 71/13 really [19] 9/18 24/4 30/25 33/10 34/25 38/6 53/10 53/14 57/12 59/2 59/15 62/18 62/19 64/14 66/19 67/9 70/12 70/15 75/4 reason [15] 6/16 12/24 13/8 13/17 23/17 26/11 26/12 41/8 42/2 53/16 53/24 54/12 70/5 76/10 78/6 reasonable [3] 20/10 74/4 74/13	reasoning [1] 68/3 reasons [3] 15/15 22/9 64/10 rebuttal [1] 20/18 recognize [1] 50/18 recognized [1] 9/6 recognizing [1] 72/2 record [15] 2/5 2/6 14/13 14/15 15/23 20/16 20/19 51/6 52/1 53/4 56/24 56/25 57/14 61/4 75/21 RECORDED [1] 1/23 recorder [3] 1/23 2/4 21/12 recording [1] 21/10 red [1] 48/4 reference [3] 17/10 56/22 66/8 referenced [1] 18/16 reflects [1] 78/11 refrain [1] 6/11 refute [1] 8/9 regard [2] 14/17 73/15 regarding [2] 47/21 50/20 regardless [2] 22/22 43/12 regards [22] 3/6 25/21 60/20 63/9 63/14 64/2 64/11 64/13 64/15 64/19 65/3 65/4 66/2 66/15 66/20 69/6 69/9 69/22 70/3 74/18 75/11 77/17 register [1] 41/20 reject [1] 31/13 rejected [4] 6/24 7/20 30/11 30/17 rejects [1] 14/17 relate [4] 24/20 50/23 50/24 57/19 related [8] 1/10 7/7 15/21 23/15 61/12 61/12 62/20 69/3 relates [5] 9/4 15/11 33/4 52/3 62/18 released [1] 70/20 reliant [1] 3/23 relief [29] 3/5 3/6 14/10 15/2 17/1 17/7 22/13 23/15 24/11 24/12 24/19 25/21 33/25 34/17 43/11 43/12 43/14 44/19 52/4 53/25 54/2 55/6 62/21 66/7 67/14 74/14 74/20 74/25 75/25 relook [1] 21/1 rely [1] 7/12 remain [1] 16/23 remaining [1] 19/10 remedy [2] 23/24 24/4 remember [6] 32/21 37/16 40/21 42/8 49/19 62/21 remote [1] 62/13 remotely [1] 17/23 remove [6] 4/15 11/1
----------	---	--	---	---

<p>R</p> <p>remove... [4] 11/4 11/6 11/7 53/8</p> <p>removed [2] 5/19 20/13</p> <p>repeatedly [2] 37/4 37/5</p> <p>rephrased [1] 25/6</p> <p>reply [8] 2/23 3/1 24/25 27/18 40/20 47/18 56/11 58/14</p> <p>REPORTING [1] 1/23</p> <p>representations [1] 72/24</p> <p>represented [1] 35/4</p> <p>Republicans [2] 27/1 31/14</p> <p>request [21] 3/21 4/25 6/12 9/4 11/11 11/25 12/7 12/9 12/13 12/16 52/3 53/25 54/21 56/17 56/17 56/18 66/15 67/19 72/15 75/23 78/13</p> <p>requested [4] 3/5 3/6 67/15 69/8</p> <p>requesting [1] 69/1</p> <p>require [1] 25/7</p> <p>required [6] 7/13 28/20 31/25 38/16 39/7 46/12</p> <p>requirement [3] 8/15 47/15 65/13</p> <p>requirements [2] 39/18 65/14</p> <p>requires [3] 17/11 59/20 59/24</p> <p>requisite [1] 20/10</p> <p>rescinded [1] 51/13</p> <p>rescission [1] 35/23</p> <p>reserved [1] 16/24</p> <p>resolution [5] 18/19 18/20 22/5 45/9 49/4</p> <p>resolved [5] 60/25 62/10 63/16 63/21 64/16</p> <p>respectfully [1] 41/17</p> <p>respective [1] 41/9</p> <p>respond [2] 20/17 40/20</p> <p>responding [1] 49/21</p> <p>response [1] 16/11</p> <p>rest [3] 27/2 78/17 78/17</p> <p>restate [1] 74/12</p> <p>restated [14] 3/25 4/14 9/6 10/8 10/13 10/22 11/3 12/17 15/4 15/18 25/5 46/23 56/20 67/23</p> <p>restatement [1] 47/13</p> <p>restrain [9] 3/23 5/2 5/9 14/25 25/3 27/19 29/5 31/22 55/14</p> <p>restrictions [2] 9/16 33/7</p> <p>result [3] 11/8 17/16 60/17</p> <p>retract [1] 38/13</p> <p>retroactive [1] 14/18</p>	<p>retroactively [2] 14/16 14/19</p> <p>returned [1] 67/2</p> <p>returning [1] 66/21</p> <p>reverse [1] 31/16</p> <p>Richard [1] 10/1</p> <p>right [65] 4/12 6/3 6/4 14/3 14/4 16/23 17/1 17/3 22/23 23/24 24/6 24/25 25/20 25/23 25/24 26/1 26/14 26/16 27/12 29/23 30/5 30/15 30/16 30/21 30/21 30/22 30/23 37/13 37/14 39/25 40/19 40/21 40/22 41/1 41/3 41/7 41/10 43/15 43/16 44/19 49/24 50/1 52/8 52/8 53/1 55/15 55/17 55/18 56/1 56/12 59/21 59/25 60/7 61/17 62/22 64/5 65/10 65/12 68/7 70/23 71/14 72/16 72/18 77/8 77/12</p> <p>rights [64] 5/8 11/12 12/8 12/14 14/3 14/18 14/19 14/22 17/8 17/17 18/18 18/19 18/22 19/14 22/21 22/22 23/4 23/6 25/8 25/18 26/13 26/20 27/9 27/13 28/12 29/7 29/9 29/14 29/14 29/16 29/20 30/10 30/10 30/12 30/14 30/15 30/24 32/13 45/8 45/8 50/6 50/9 50/13 50/15 50/15 50/17 54/6 56/14 57/22 61/20 63/14 66/6 68/16 68/19 68/20 68/25 69/3 69/10 69/21 70/2 70/8 70/11 74/16 74/20</p> <p>ripe [4] 60/9 62/6 62/8 62/14</p> <p>ripeness [1] 63/6</p> <p>risk [1] 13/6</p> <p>Roethlisberger [1] 59/22</p> <p>role [1] 61/11</p> <p>roll [1] 72/4</p> <p>rule [1] 51/15</p> <p>rules [1] 58/22</p> <p>ruling [4] 41/12 58/19 75/3 75/11</p> <p>rulings [2] 13/13 75/11</p> <p>run [2] 35/5 45/4</p> <p>running [1] 57/16</p> <p>Rust [1] 71/7</p> <hr/> <p>S</p> <p>S-z-i-l-a-g-y-i [1] 60/2</p> <p>said [15] 18/6 23/18 24/3 28/1 35/23 37/1 38/15 42/1 49/6 53/20 53/21 68/4 70/17 73/22 77/13</p> <p>same [21] 12/20 16/22 17/15 17/15 17/16 18/15 19/17 20/12 35/5</p>	<p>38/4 38/15 41/13 44/7 58/7 63/16 71/12 72/2 72/18 72/20 73/1 77/10</p> <p>saw [1] 51/10</p> <p>say [25] 19/1 20/1 23/20 27/4 27/21 28/4 30/6 32/10 32/11 32/17 33/3 36/10 36/13 38/5 39/2 39/25 40/1 42/3 42/17 43/2 43/21 44/1 57/12 69/25 71/9</p> <p>saying [17] 18/12 18/25 26/12 38/7 39/4 40/6 41/24 51/19 54/12 54/17 55/9 55/23 65/5 66/7 67/4 67/4 70/13</p> <p>says [15] 19/12 28/24 31/21 32/2 32/6 32/11 32/16 32/18 33/6 33/18 34/3 41/21 42/18 43/19 57/3</p> <p>schedule [2] 64/21 72/23</p> <p>scope [9] 3/5 54/2 56/17 63/3 64/11 66/13 67/12 67/14 68/2</p> <p>screening [1] 29/25</p> <p>SEC [2] 13/6 13/7</p> <p>second [11] 9/10 14/9 17/18 17/21 36/17 40/1 44/10 49/16 67/18 75/4 75/7</p> <p>Secondly [1] 27/16</p> <p>Section [4] 33/3 33/18 33/21 47/14</p> <p>Section 5 [1] 33/3</p> <p>Section 5.03 [1] 47/14</p> <p>Section 6C [1] 33/21</p> <p>securities [1] 44/6</p> <p>see [14] 19/25 22/12 27/16 28/10 32/2 32/2 38/24 39/3 43/17 64/12 72/1 72/6 72/16 76/12</p> <p>seeing [3] 57/23 64/23 68/12</p> <p>seek [2] 17/1 17/7</p> <p>seem [1] 65/5</p> <p>seemed [1] 36/8</p> <p>seems [1] 54/11</p> <p>sees [1] 64/14</p> <p>self [1] 68/5</p> <p>self-help [1] 68/5</p> <p>send [1] 30/2</p> <p>sentences [1] 40/2</p> <p>separate [3] 28/19 28/20 51/22</p> <p>separately [1] 77/1</p> <p>series [23] 17/11 17/16 18/14 18/21 19/6 19/11 19/13 19/19 20/13 21/24 22/4 22/4 45/3 45/19 45/21 46/24 48/21 48/21 48/22 48/25 49/12 50/5 64/11</p> <p>Series I [3] 46/24 48/21 48/21</p> <p>Series J [2] 48/25 49/12</p> <p>Series J-1 [1] 19/13</p>	<p>Services [1] 71/7</p> <p>set [10] 15/19 18/19 30/14 39/21 45/9 59/14 59/21 61/5 64/17 64/20</p> <p>setting [1] 2/21</p> <p>settlement [1] 13/17</p> <p>shall [4] 32/16 32/17 39/12 70/18</p> <p>SHANKS [13] 1/17 2/12 3/19 17/10 18/16 21/8 21/11 22/15 26/9 71/24 72/5 72/14 76/7</p> <p>Shanks' [1] 32/7</p> <p>share [3] 27/23 35/14 45/13</p> <p>shareholder [48] 9/2 9/24 10/6 10/25 12/8 14/11 14/14 14/19 24/10 25/18 29/7 29/9 29/14 29/20 30/7 30/10 30/10 30/12 30/13 30/13 31/3 44/16 44/17 44/18 44/20 44/21 44/23 48/19 48/19 50/16 52/20 53/3 54/6 55/12 56/22 56/23 57/14 57/22 61/4 62/1 68/19 68/20 68/25 69/10 69/21 70/2 70/8 70/10</p> <p>shareholders [37] 4/17 4/18 7/1 9/7 9/23 11/7 11/7 12/22 12/23 14/12 16/25 17/8 22/20 22/22 22/23 25/8 26/23 29/15 31/4 31/7 31/11 38/3 44/22 44/25 45/1 46/25 50/13 50/14 50/17 50/17 51/25 56/13 56/23 56/25 57/15 57/19 69/2</p> <p>shareholders' [3] 5/13 12/14 68/16</p> <p>shares [25] 3/10 4/11 19/6 24/8 28/3 30/17 33/8 33/13 35/1 35/3 35/16 35/22 35/24 37/3 37/10 38/1 38/2 38/4 43/5 44/4 48/9 55/20 55/23 56/6 62/3</p> <p>she [2] 8/23 21/8</p> <p>she's [1] 26/9</p> <p>shifting [1] 16/15</p> <p>short [2] 46/11 76/6</p> <p>shortening [1] 21/25</p> <p>should [22] 5/16 6/6 6/16 9/1 11/17 13/8 13/18 20/4 28/25 35/16 50/10 54/14 55/21 55/23 56/6 56/8 63/9 66/1 66/4 66/11 66/20 67/13</p> <p>shouldn't [1] 38/21</p> <p>show [4] 20/2 43/3 44/13 60/6</p> <p>showing [2] 59/25 62/9</p> <p>shown [4] 61/15 62/8 63/13 66/19</p> <p>shows [1] 69/12</p>	<p>sidelines [1] 26/24</p> <p>sides [1] 68/8</p> <p>signatories [2] 9/22 10/1</p> <p>signed [5] 14/13 15/24 18/19 18/21 56/24</p> <p>significant [2] 4/13 60/1</p> <p>signing [1] 57/6</p> <p>signs [1] 10/2</p> <p>Silva [7] 2/18 10/1 10/4 11/3 25/11 25/17 47/5</p> <p>similar [1] 53/17</p> <p>similarly [2] 7/20 63/18</p> <p>simple [9] 3/21 22/6 24/24 29/15 37/8 44/12 44/17 46/12 46/15</p> <p>simply [2] 16/5 42/13</p> <p>simultaneously [3] 4/7 5/22 6/3</p> <p>since [12] 3/17 13/10 16/6 52/7 66/15 67/1 67/12 68/21 70/19 75/10 76/12 76/13</p> <p>Singal [6] 33/11 36/18 36/25 37/5 44/5 50/20</p> <p>single [5] 35/14 35/14 45/1 45/13 60/7</p> <p>sister [1] 7/7</p> <p>sit [1] 27/2</p> <p>sitting [1] 26/23</p> <p>sky [1] 20/4</p> <p>slash [1] 59/1</p> <p>smooth [1] 71/21</p> <p>so [185]</p> <p>some [27] 2/25 3/10 11/11 11/20 13/17 13/17 19/24 26/20 29/13 35/6 35/7 38/3 48/23 50/19 52/16 54/1 55/24 63/8 69/15 70/2 70/6 70/11 71/13 71/22 71/23 75/13 75/21</p> <p>somebody [4] 18/2 35/18 38/6 44/13</p> <p>somehow [6] 34/2 61/19 61/21 69/15 70/1 71/9</p> <p>someone [6] 17/19 17/21 18/7 24/16 29/25 37/1</p> <p>something [13] 6/5 12/12 21/9 21/12 21/17 23/1 28/14 40/22 43/14 60/14 64/5 73/6 77/23</p> <p>Sometimes [1] 21/16</p> <p>somewhat [2] 53/17 54/11</p> <p>soon [1] 72/21</p> <p>sorry [10] 17/20 18/10 29/12 29/12 32/23 37/10 39/24 40/12 45/6 55/16</p> <p>sort [8] 11/11 11/20 35/6 35/8 50/11 51/23 73/24 75/21</p> <p>sounds [1] 30/25</p> <p>speaking [1] 21/21</p> <p>special [2] 2/21 29/13</p>
--	---	--	---	--

<p>S</p> <p>specific [4] 12/9 44/20 52/15 58/1</p> <p>specifically [3] 16/24 21/23 56/3</p> <p>speculation [4] 32/7 32/8 47/24 48/5</p> <p>speculative [1] 14/7</p> <p>speed [1] 20/4</p> <p>spirit [1] 4/4</p> <p>square [3] 29/8 29/19 34/25</p> <p>squirrely [1] 72/25</p> <p>stake [1] 62/3</p> <p>stamp [2] 36/20 36/24</p> <p>stand [2] 14/9 44/11</p> <p>standard [2] 59/6 61/14</p> <p>standards [8] 3/12 49/23 56/3 60/13 63/9 63/11 65/25 66/10</p> <p>standing [24] 5/21 6/4 6/5 6/7 6/9 6/14 8/2 8/4 11/15 15/1 29/22 29/23 48/10 54/18 54/25 55/10 55/11 59/2 59/14 59/17 59/20 62/1 62/17 71/17</p> <p>standpoint [1] 19/25</p> <p>start [3] 16/22 46/19 46/21</p> <p>started [2] 47/3 49/18</p> <p>state [4] 50/2 55/22 59/16 65/13</p> <p>stated [7] 49/22 61/25 64/24 69/5 69/17 73/13 75/13</p> <p>statement [9] 22/16 24/5 29/18 30/8 36/14 36/15 47/16 69/11 77/18</p> <p>statements [3] 49/21 56/15 71/5</p> <p>States [1] 59/19</p> <p>stating [3] 42/3 52/13 55/19</p> <p>status [44] 3/22 4/23 5/7 5/11 5/17 6/12 6/16 9/19 11/14 11/17 11/23 11/25 12/4 12/7 12/11 12/13 12/15 12/16 12/24 13/14 13/22 16/6 16/10 48/20 52/4 52/7 52/7 52/10 52/14 52/17 52/19 53/3 53/8 53/10 55/21 57/17 64/10 64/13 64/14 65/1 65/16 65/20 68/10 68/23</p> <p>statute [2] 7/12 65/10</p> <p>statutes [3] 7/7 8/14 58/22</p> <p>statutorily [1] 17/8</p> <p>statutory [5] 7/19 47/21 47/22 65/13 65/14</p> <p>stay [2] 67/5 75/24</p> <p>step [3] 4/10 35/2 43/14</p>	<p>Stew [1] 62/21</p> <p>still [7] 9/1 19/24 22/9 36/14 37/8 67/7 75/15</p> <p>stipulate [2] 73/16 73/19</p> <p>stipulation [1] 73/14</p> <p>stock [86]</p> <p>stockholder [1] 64/3</p> <p>stockholders [1] 66/21</p> <p>stocks [1] 55/12</p> <p>stop [10] 3/24 9/9 12/13 13/1 13/20 22/20 29/24 30/9 49/16 54/11</p> <p>straight [2] 35/10 59/10</p> <p>straightforward [1] 4/25</p> <p>street [1] 42/23</p> <p>Strohecker [1] 47/11</p> <p>strong [1] 25/13</p> <p>structure [1] 61/13</p> <p>subject [1] 63/15</p> <p>submitted [1] 39/14</p> <p>subparagraph [1] 70/13</p> <p>Subpart [4] 7/12 7/17 7/21 57/21</p> <p>Subpart 2 [1] 57/21</p> <p>Subpart 3 is [1] 7/17</p> <p>Subpart 3 of [1] 7/12</p> <p>Subpart is [1] 7/21</p> <p>subsections [1] 59/11</p> <p>subsequent [1] 54/1</p> <p>substantial [2] 60/17 62/4</p> <p>substantive [4] 39/6 41/18 41/25 42/16</p> <p>subsumed [4] 57/21 57/23 57/25 69/9</p> <p>success [14] 14/10 15/20 19/20 20/2 20/10 20/11 21/3 34/8 37/20 37/24 44/19 74/4 74/21 75/16</p> <p>successors [2] 67/22 69/14</p> <p>such [4] 35/18 53/11 56/14 69/3</p> <p>sudden [1] 13/11</p> <p>sue [2] 29/23 44/19</p> <p>suffer [1] 63/12</p> <p>sufficient [4] 25/25 31/7 47/16 67/8</p> <p>sufficiently [1] 62/12</p> <p>suit [2] 6/7 29/25</p> <p>sum [1] 37/16</p> <p>summary [18] 6/13 11/15 14/21 15/14 16/22 18/15 19/23 22/8 23/20 43/13 48/25 49/13 49/19 49/19 49/23 58/16 75/3 75/10</p> <p>super [1] 62/23</p> <p>superpriority [1] 29/14</p> <p>supplement [2] 42/12 53/12</p> <p>supplemental [1] 15/8</p> <p>supplied [1] 57/10</p> <p>support [5] 6/22 37/6</p>	<p>39/20 42/9 42/21</p> <p>supported [3] 16/20 22/10 43/8</p> <p>Supreme [1] 49/5</p> <p>sure [18] 3/11 17/22 17/23 18/7 18/14 21/11 23/19 23/22 39/11 58/7 68/24 71/12 71/18 74/1 74/7 74/7 75/21 76/9</p> <p>Suwyn [1] 36/10</p> <p>system [1] 22/25</p> <p>Szilagyi [1] 60/2</p> <p>Szkaradeks [2] 33/11 45/25</p> <p>T</p> <p>t's [1] 60/18</p> <p>T-e-s-t-a [1] 60/3</p> <p>take [24] 3/9 6/5 6/24 10/25 14/19 22/18 35/5 41/6 41/11 45/10 46/23 51/22 54/17 56/8 57/11 58/21 58/22 63/23 66/1 66/20 68/5 68/15 75/23 76/3</p> <p>taken [10] 6/6 8/6 14/8 34/13 53/19 53/19 53/21 67/17 68/25 69/21</p> <p>takes [1] 36/4</p> <p>taking [15] 3/23 29/6 45/13 56/12 57/22 58/21 64/18 67/9 67/10 67/22 68/4 68/15 69/1 70/13 74/19</p> <p>talk [2] 42/6 48/25</p> <p>talked [1] 22/2</p> <p>talking [1] 30/4</p> <p>talks [2] 19/3 66/5</p> <p>Tandem [1] 61/24</p> <p>technical [1] 28/19</p> <p>teed [1] 77/11</p> <p>telephone [1] 21/8</p> <p>tell [11] 2/24 3/2 5/6 6/21 31/5 31/11 31/12 32/4 36/21 47/25 48/3</p> <p>telling [1] 9/7</p> <p>tells [1] 11/10</p> <p>term [1] 56/1</p> <p>terms [3] 43/18 67/23 70/25</p> <p>Testa [1] 60/3</p> <p>testifying [1] 40/8</p> <p>text [2] 36/17 36/22</p> <p>tha [1] 60/18</p> <p>than [18] 4/17 12/22 16/5 18/1 24/17 26/23 27/9 43/20 43/24 57/9 66/20 69/5 71/2 74/9 75/5 75/5 77/2 78/8</p> <p>thank [18] 2/14 3/19 9/14 16/13 18/11 21/22 46/15 46/16 46/18 49/25 58/9 73/11 73/20 76/20 76/22 78/17 79/1 79/2</p> <p>Thanks [1] 2/19</p> <p>that [545]</p> <p>that's [92]</p>	<p>Thatcher [2] 66/4 66/8</p> <p>their [38] 7/24 16/3 16/19 16/20 17/8 19/20 24/25 28/8 28/12 28/21 28/25 30/12 30/18 31/3 31/4 31/25 32/5 33/13 34/2 34/19 35/5 35/21 36/5 36/20 37/9 37/20 37/21 38/24 41/9 42/25 42/25 42/25 48/11 50/13 50/15 50/15 61/21 62/2</p> <p>them [27] 9/19 13/13 14/8 15/4 16/9 17/4 23/6 24/3 24/9 24/9 24/11 27/10 28/15 30/9 31/14 33/13 36/4 36/12 43/7 45/14 48/14 50/15 55/3 57/11 57/14 62/3 75/6</p> <p>themselves [1] 28/5</p> <p>then [39] 3/15 4/3 5/22 6/3 12/2 13/1 19/14 21/21 22/8 26/19 26/20 27/2 31/15 31/21 37/1 37/3 39/7 40/19 43/18 44/15 46/8 52/9 54/17 54/18 56/21 57/15 62/6 62/25 64/7 65/25 66/10 68/15 71/7 71/10 71/15 72/15 74/9 76/11 77/13</p> <p>theory [1] 6/24</p> <p>there [83]</p> <p>there's [39] 2/24 5/19 7/23 11/16 17/4 19/12 20/5 27/3 30/14 30/15 32/14 33/9 33/22 37/18 38/20 38/21 39/23 45/19 49/6 49/9 50/8 50/8 50/9 52/9 54/18 62/12 63/20 64/23 66/15 66/19 68/12 68/13 68/24 71/4 71/15 72/3 72/3 74/13 77/4</p> <p>therefore [14] 36/15 43/9 51/13 61/18 62/5 62/13 63/5 65/21 66/24 68/23 68/24 69/19 70/9 74/19</p> <p>therein [1] 59/11</p> <p>thereof [2] 59/15 70/23</p> <p>THERESE [3] 1/17 2/12 3/19</p> <p>thereto [1] 67/11</p> <p>these [37] 5/16 9/7 9/8 10/7 10/11 10/22 11/2 12/11 12/16 12/18 12/22 13/4 13/15 14/5 14/6 14/7 15/22 15/23 27/9 31/10 33/20 34/3 34/10 34/12 34/14 35/16 45/13 47/21 50/12 51/12 52/16 53/5 56/24 57/5 57/12 57/19 62/9</p> <p>they [141]</p> <p>they're [24] 10/24 15/4 17/24 22/18 23/6 25/9 28/4 31/1 31/3 31/11</p>	<p>34/9 34/15 34/15 34/23 36/4 37/23 37/24 44/16 44/17 51/23 56/23 57/13 62/2 65/5</p> <p>they've [2] 13/11 24/22</p> <p>thief [2] 38/3 38/6</p> <p>thing [8] 24/9 27/12 31/6 34/1 58/7 63/16 71/10 77/17</p> <p>things [15] 24/19 25/1 26/20 34/10 34/12 37/17 52/9 56/1 56/16 57/14 58/17 58/19 65/16 66/14 77/5</p> <p>think [34] 4/9 4/25 5/5 5/5 5/16 9/1 12/10 14/23 15/5 15/12 15/13 15/17 15/20 18/8 21/23 26/16 27/3 36/18 36/19 37/19 39/7 42/15 50/3 54/25 55/1 55/2 55/11 56/5 56/6 57/25 72/19 72/25 74/12 78/9</p> <p>thinks [3] 13/18 18/2 65/2</p> <p>third [19] 5/2 5/9 5/10 13/4 13/9 16/1 26/20 29/5 47/13 51/8 51/10 51/21 55/24 56/11 56/12 69/1 69/15 70/16 75/5</p> <p>third-party [1] 69/15</p> <p>this [193]</p> <p>those [35] 5/18 7/15 8/19 9/20 10/6 15/5 18/18 22/22 22/23 23/3 23/6 32/15 35/12 37/7 40/20 43/4 45/8 48/12 51/3 53/13 53/23 54/8 55/24 56/14 57/24 57/25 58/3 59/2 61/22 63/21 64/11 65/23 67/16 69/3 69/17</p> <p>though [4] 18/23 35/17 35/17 57/21</p> <p>thought [1] 58/5</p> <p>threat [1] 10/23</p> <p>three [10] 12/20 12/20 32/17 32/18 32/19 33/1 51/7 57/23 69/19 70/17</p> <p>threshold [1] 43/12</p> <p>through [18] 14/1 16/19 25/1 25/15 25/16 33/19 45/4 46/8 47/4 47/5 47/5 47/6 69/17 71/2 72/4 74/3 74/17 74/17</p> <p>thrust [2] 5/20 7/25</p> <p>thus [1] 61/2</p> <p>tied [1] 37/22</p> <p>Tifford [1] 61/24</p> <p>time [30] 3/4 8/24 12/9 21/25 36/20 36/24 37/13 38/7 38/20 40/22 41/10 41/22 42/10 44/1 52/1 52/20 53/11 53/18 56/14 69/3 71/23 71/24 72/3 72/22 75/23 76/20 77/19 78/7 78/13 78/18</p>
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T	28/14 28/20 29/2 35/2 35/3 35/4 35/13 35/16 36/5 36/8 36/11 37/8 37/11 43/1 43/2 43/4 43/24 44/4 44/12 44/13 45/12 47/24 48/1 48/1 48/3 48/8 48/18 51/5 51/10 51/17 51/25 61/9 61/12 61/12 63/1 TTP8's [3] 29/3 44/5 51/8 turn [3] 22/15 34/25 37/12 turning [2] 13/8 38/18 turns [1] 5/22 two [10] 22/24 24/10 30/20 34/19 37/7 42/23 55/24 58/25 59/2 77/5 two years [1] 22/24 two-way [1] 42/23 type [2] 64/12 76/16	until [15] 5/7 6/17 10/8 11/17 12/5 13/15 19/22 23/13 27/5 27/14 28/2 53/2 53/11 56/13 69/3 unusual [1] 31/17 unwind [3] 9/8 9/15 53/5 up [22] 2/25 21/3 21/6 35/11 37/16 38/20 39/22 40/12 40/22 41/10 42/10 44/11 45/6 46/5 53/2 71/17 75/23 76/1 76/7 76/7 76/9 77/11 Upchurch [1] 60/10 upfront [1] 13/19 upon [19] 3/23 6/11 7/1 7/12 9/16 11/25 12/5 14/8 14/19 27/19 48/11 54/4 54/13 55/2 55/4 56/9 56/12 69/1 70/22 us [14] 4/1 4/5 15/21 20/1 27/2 43/2 43/2 48/12 48/13 49/8 51/21 53/12 56/21 57/10 use [2] 45/20 56/1 used [2] 39/20 45/22 utilize [1] 41/12	video [4] 47/23 53/15 72/9 79/8 view [3] 67/1 69/8 73/12 viewed [6] 53/22 54/22 68/7 71/6 73/4 73/8 viewing [1] 67/5 viewpoint [1] 3/5 viewpoints [1] 3/7 violated [4] 34/11 34/12 51/14 57/2 violates [1] 4/3 violation [2] 4/18 10/9 virtually [1] 7/19 vision [1] 33/12 voice [1] 27/14 void [5] 5/19 10/16 10/23 11/8 14/5 vote [5] 19/11 19/15 45/23 46/1 57/14 voted [2] 50/13 50/14 votes [7] 19/6 45/15 45/20 45/21 56/12 57/12 69/2 voting [14] 9/23 14/22 15/24 17/17 18/18 18/18 18/22 19/7 19/13 32/13 45/8 45/8 50/5 50/9	27/12 36/9 39/24 45/20 72/4 we're [28] 2/6 2/6 9/18 11/24 13/19 16/8 17/19 20/13 22/8 24/10 24/11 24/12 27/4 27/6 30/4 30/8 31/6 41/1 48/20 51/21 52/17 53/2 54/3 55/9 57/12 64/9 71/22 71/23 we've [8] 6/22 7/5 7/11 14/24 47/22 48/15 65/10 71/4 WEDNESDAY [1] 1/12 week [1] 78/17 weird [1] 57/6 welcome [1] 18/1 well [36] 5/16 5/25 12/22 12/23 13/15 14/17 17/5 22/17 22/21 24/14 28/7 29/15 30/20 32/1 33/8 33/19 39/23 40/6 40/13 43/20 45/10 47/6 50/12 52/15 55/6 56/19 60/9 63/19 65/9 65/10 68/14 72/1 72/19 72/23 74/23 75/11 went [5] 13/12 31/2 31/3 31/13 74/3 were [23] 10/17 14/12 18/12 19/23 31/8 33/13 41/23 49/22 51/2 51/25 53/4 53/7 53/19 54/9 55/20 56/6 56/7 56/9 71/6 73/4 73/13 76/11 77/6 weren't [6] 42/11 50/7 53/5 53/5 53/20 57/6 what [117] what's [4] 31/23 34/5 34/18 53/13 whatever [7] 3/8 12/5 18/3 28/13 41/12 76/5 78/3 when [20] 9/19 11/21 14/13 17/6 23/15 28/23 40/5 46/4 52/16 52/17 54/22 55/17 56/1 57/11 61/13 62/2 63/3 64/17 74/3 74/17 Whenever [1] 78/4 where [21] 7/20 20/1 25/19 39/2 40/16 41/9 41/20 42/19 42/19 42/19 42/20 46/19 49/2 51/6 51/21 54/10 61/13 66/5 66/14 70/24 72/20 whether [37] 6/9 6/19 9/3 12/6 19/10 20/3 20/4 24/15 26/14 27/5 27/8 27/9 30/3 33/24 36/25 37/23 40/10 43/9 43/13 43/13 43/14 43/18 57/19 58/25 59/1 59/10 60/23 61/8 62/17 62/25 63/7 63/9 67/2 68/4 68/5 70/4 75/14 which [64] 4/12 4/14 4/15 6/24 8/2 8/2 10/18
times [3] 10/2 64/15 68/20 tired [1] 54/7 title [4] 8/14 17/12 44/7 51/3 today [15] 2/20 15/11 15/16 18/23 22/7 38/14 45/17 46/13 49/20 57/3 58/16 58/18 75/23 76/3 77/6 today's [2] 53/13 74/24 together [2] 31/14 73/1 told [2] 10/20 40/6 tomorrow [4] 67/2 70/20 71/1 72/22 too [6] 12/4 12/24 23/14 37/10 73/19 76/7 took [2] 8/14 8/16 topples [1] 17/12 total [2] 66/24 67/6 totality [1] 66/23 totally [2] 27/13 33/5 towards [1] 19/7 tradition [1] 25/13 TRAN [1] 1/1 transaction [5] 28/25 44/8 48/8 48/10 50/23 transactions [1] 43/24 transcribed [2] 1/23 79/8 Transcriber [1] 79/12 transcript [6] 1/8 1/13 77/1 77/18 77/21 78/1 transfer [2] 33/12 42/19 transferability [1] 33/7 transfers [1] 7/14 treat [2] 61/4 75/1 treated [1] 17/11 treatment [1] 20/12 trial [5] 40/23 41/1 64/17 64/18 64/22 tried [2] 10/25 10/25 trigger [1] 24/9 triggered [1] 30/24 TRO [14] 3/4 4/2 6/25 11/5 27/25 53/18 63/17 63/17 63/18 66/16 67/1 67/7 70/25 71/9 true [2] 43/11 57/4 truly [1] 79/7 trust [1] 78/10 try [4] 21/3 61/20 65/16 77/20 trying [18] 9/18 13/20 15/4 23/5 28/4 33/16 34/22 34/23 42/13 53/4 53/5 54/20 55/25 57/12 61/21 64/12 65/16 77/21 TTP [1] 51/20 TTP's [1] 8/24 TTP8 [53] 5/24 5/25 7/13 7/14 7/16 8/21 11/12 11/20 11/22 12/2 14/11 17/2 27/17 27/24 28/4 28/7 28/8 28/11	U UCC [2] 8/16 8/17 Uh [5] 2/7 23/25 49/15 77/9 77/16 Uh-huh [4] 2/7 23/25 77/9 77/16 Uh-oh [1] 49/15 ultimately [2] 62/11 64/16 unanimous [1] 10/19 unclear [2] 13/4 54/1 under [32] 3/24 5/14 6/20 7/6 7/7 7/17 8/5 8/13 9/19 10/19 12/16 12/18 12/19 27/25 39/1 47/9 50/4 51/12 52/23 54/8 55/12 56/3 61/17 62/14 67/23 70/25 71/6 73/13 74/20 75/4 78/7 78/13 underlying [6] 11/12 28/24 33/20 43/25 60/13 60/23 undermine [1] 4/6 understand [2] 57/7 57/7 undisputed [4] 35/13 36/3 43/7 48/5 undo [1] 33/14 unilateral [1] 63/6 unilaterally [6] 5/13 6/20 7/4 7/22 28/7 55/12 unintended [1] 71/13 unique [3] 64/4 64/6 66/7 uniquely [1] 16/24 United [1] 59/19 universal [1] 63/6 unless [2] 28/2 29/25 unnecessary [1] 27/13 unproven [3] 7/1 14/19 44/3 unquestionably [2] 5/6 8/3 unquote [1] 8/11 unspecified [1] 33/4	V valid [40] 5/18 9/25 10/5 12/6 15/25 16/24 19/14 24/17 27/6 29/20 30/6 30/18 31/3 32/1 32/3 34/15 35/1 37/23 37/23 37/24 38/1 38/3 38/4 38/16 44/12 44/16 44/17 44/18 44/23 44/25 46/14 46/14 48/18 48/19 55/2 56/8 57/2 57/18 60/24 70/22 validity [10] 4/19 10/7 10/8 10/10 15/2 20/6 26/11 53/12 56/14 63/20 validly [6] 24/8 25/7 35/3 35/14 50/5 57/19 value [1] 8/22 variety [1] 62/9 various [6] 3/10 63/8 66/21 68/20 68/21 70/17 VEGAS [1] 2/1 verbiage [1] 3/8 version [1] 70/15 versus [17] 2/9 7/18 47/11 48/24 49/2 49/3 54/1 59/16 59/22 60/2 60/10 60/18 61/24 62/14 66/4 66/8 71/7 very [13] 14/1 26/20 44/12 46/15 46/16 50/16 51/16 55/6 55/7 57/6 70/12 78/9 78/18 vested [1] 6/8 vexatious [1] 30/1 Via [1] 1/17 vibrating [1] 21/13	W waited [1] 19/22 waiver [1] 11/20 walk [1] 71/2 walking [1] 29/24 want [40] 3/14 3/21 5/17 9/9 11/13 13/14 13/21 13/22 16/9 17/23 18/7 21/5 22/23 23/7 25/12 26/13 27/7 27/10 32/4 33/14 37/9 37/9 46/7 50/2 50/3 52/1 68/4 68/5 70/6 71/8 71/11 71/12 71/21 71/24 72/17 72/20 77/5 77/12 77/18 77/19 wanted [8] 12/22 12/23 34/11 64/21 71/9 75/20 75/25 76/7 wants [7] 11/19 12/11 22/7 23/13 28/13 43/13 50/18 warrants [1] 66/6 was [101] wasn't [11] 8/24 25/10 25/10 25/11 36/15 47/17 51/21 53/21 54/13 58/1 68/11 watching [1] 26/24 way [16] 12/8 22/25 23/9 26/16 34/6 36/6 36/25 37/4 37/10 38/21 41/14 42/4 42/23 63/21 64/18 69/11 ways [4] 6/2 11/24 52/2 59/1 we [162] we'd [1] 35/20 we'll [7] 16/22 21/21	

<p>W</p> <p>which... [57] 11/6 13/16 13/23 17/9 17/16 18/15 18/16 19/2 22/2 23/8 24/10 24/11 26/22 27/22 29/6 30/10 31/2 31/13 31/20 32/17 33/1 33/4 33/20 34/20 34/24 35/1 36/13 37/4 37/17 38/16 38/18 38/25 40/14 41/18 42/17 43/25 44/7 44/15 51/1 54/13 59/24 60/2 60/16 60/19 60/21 61/7 63/15 63/17 64/21 68/7 68/22 70/15 70/18 75/22 75/22 77/14 77/19 while [6] 4/7 19/9 21/21 61/11 70/11 78/8 who [15] 3/7 5/3 9/23 15/24 17/19 26/21 26/23 27/17 29/16 34/21 35/4 37/1 45/13 50/13 50/14 whole [4] 13/12 14/17 27/12 75/9 wholly [2] 50/22 50/22 whom [2] 5/4 5/15 whose [6] 4/18 4/19 14/11 26/12 39/13 50/16 why [30] 6/16 11/16 11/19 13/4 13/8 13/17 18/25 22/9 23/17 28/11 31/22 34/16 38/7 41/4 41/8 41/13 41/24 42/2 42/21 48/20 53/16 53/24 54/12 55/3 55/25 57/5 57/5 70/5 76/10 78/6 will [39] 2/24 2/25 3/2 3/9 5/12 6/15 6/18 13/3 14/23 15/9 15/9 15/12 15/14 15/17 16/18 20/18 21/24 29/6 33/7 37/1 37/12 41/17 42/5 42/6 42/16 44/14 48/1 48/3 60/17 63/4 63/12 63/23 66/11 71/16 72/21 75/22 76/4 76/6 78/10 Williams [1] 79/12 win [1] 31/15 wish [3] 12/8 77/8 78/16 within [2] 57/23 59/6 without [8] 8/18 10/6 13/13 35/19 36/24 69/23 70/2 76/11 won't [2] 44/14 75/23 word [1] 46/17 work [3] 14/16 70/6 73/1 works [4] 22/25 26/15 37/11 38/22 worries [3] 3/16 18/6 32/24 would [61] 3/8 4/14</p>	<p>4/18 4/20 7/13 10/5 10/16 11/8 11/11 13/4 14/16 15/16 16/5 17/7 19/24 20/1 20/15 20/19 21/20 27/22 28/20 33/12 39/22 40/19 42/21 44/23 47/17 47/19 50/6 50/19 50/24 52/18 52/21 52/23 52/25 55/2 57/1 57/2 57/5 57/5 58/2 60/21 63/25 64/3 66/23 66/24 67/2 67/7 68/6 68/24 69/8 70/1 70/9 70/10 70/12 71/14 72/9 72/20 73/1 74/19 76/25 wouldn't [1] 61/19 wrap [1] 46/5 write [2] 37/2 75/22 writing [3] 71/6 73/5 73/14 written [10] 10/19 18/19 18/20 22/5 45/9 56/21 72/20 73/5 73/8 78/1 wrong [3] 23/12 32/8 33/19</p> <hr/> <p>X</p> <p>XXXI [1] 1/6</p> <hr/> <p>Y</p> <p>yeah [10] 9/15 18/4 36/10 36/10 36/11 54/3 75/6 75/7 77/25 78/5 year [1] 22/24 years [3] 12/21 22/24 53/9 Yep [1] 76/14 yes [18] 13/24 16/13 18/24 26/3 26/11 28/19 28/24 38/19 38/20 46/18 48/9 51/4 58/9 60/25 63/12 72/9 72/12 73/16 yet [4] 9/18 60/25 63/15 64/20 you [209] you'd [2] 52/11 68/6 You'll [1] 27/21 you're [18] 2/5 3/11 20/23 37/16 52/13 52/13 54/2 54/16 54/20 55/20 64/17 71/17 72/6 73/3 76/13 77/10 77/20 77/21 you've [2] 21/12 62/7 your [65] 2/11 2/12 2/16 3/12 3/17 3/19 4/22 6/21 9/6 18/5 18/11 18/12 20/22 20/24 21/12 22/7 23/13 24/6 24/11 26/1 26/4 26/20 28/10 28/13 28/13 39/2 40/1 43/2 46/3 46/18 49/19 52/10 52/12 53/24 54/11 54/14 54/19 54/19 54/21 55/1 56/10 56/11</p>	<p>56/20 58/9 64/21 64/22 71/19 71/24 72/7 72/8 72/9 72/14 73/7 73/7 73/15 73/19 75/25 76/18 76/20 77/18 78/9 78/17 78/17 78/18 79/2 yours [1] 76/23 yourself [1] 21/21</p> <hr/> <p>Z</p> <p>zero [1] 20/11</p>		
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